

**Vol. I**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1938**

**No. 509**

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**DENIS J. DRISCOLL, THOMAS C. BUCHANAN AND  
RICHARD J. BEAMISH, ET AL., APPELLANTS,**

*vs.*

**EDISON LIGHT AND POWER COMPANY**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

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**FILED DECEMBER 6, 1938.**





# SUPREME COURT OF THE UNITED STATES

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RICHARD J. BEAMISH, ET AL., APPELLANTS,

vs.

EDISON LIGHT AND POWER COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

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**IN UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

DECEMBER TERM, 1937

No. 9893

EDISON LIGHT & POWER COMPANY,

VS.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAM-  
ISH, Arthur Colegrove and Donald Livingston, Individ-  
ually and as the Persons Constituting the Pennsylvania  
Public Utility Commission

UTILITY CONSUMERS LEAGUE OF YORK, PA. (Intervenor)

Walter Biddle Saul, Esq.

Samuel Graff Miller, Esq., Edward Knuff, Esq.

Herbert B. Cohen, Esq.

DOCKET ENTRIES

- Dec. 14, 1937. Bill of Complaint filed.  
 " 14, " Subpoena ~~exit~~—returnable January 3, 1938.  
 " 17, " Order convening Court under Sec. 266 Judi-  
       cial Code filed.  
 " 17, " Petition of Utility Consumers League of  
       York, Pa., for leave to intervene and Or-  
       der of Court granting prayer of petition  
       filed.  
 " 17, " Hearing ~~sur~~ motion for restraining order.  
 " 17, " Order to show cause and Temporary Re-  
       straining Order filed.  
 " 20, " Affidavits in support of plaintiff's motion  
       for restraining order filed.  
 " 20, " Bond of Plaintiff ~~sur~~ restraining order in  
       \$75,000., without surety and Order of  
       Court approving bond filed.  
 " 28, " Appearance of Herbert B. Cohen, Esq., for  
       Utility Consumers' League filed.



## Docket Entries--Continued

- Jan. 4, 1938. Petition of Respondents for order requiring surety bond filed.
- " 4, " Answer of Plaintiff to petition for order requiring surety bond filed.
- " 4, " Hearing sur petition for order requiring surety bond.
- " 12, " Answer filed.
- " 12, " Appearance of Samuel Graff Miller, Esq., and Edward Knuff, Esq., for defendants filed.
- " 17, " Answer by Utility Consumers League filed.  
[fol. 4]
- Jan. 17, 1938. Hearing sur motion for preliminary injunction. Witnesses sworn.
- " 17, " In open Court: Motion to strike Answer of Utility Consumers League from record. Eo die: Motion denied.
- " 17, " Testimony closed. Restraining order continued and bond increased to \$150,000.
- " 17, " Subpœna returned: "service accepted" and filed.
- " 17, " Affidavit of service of notice of convening of Statutory Court filed.
- " 25, " Bond of Plaintiff sur restraining order in \$150,000., without surety, and Order of Court approving bond filed.
- " 31, " Testimony filed.
- May 9, " Trial hearing.
- " 16, " Transcript of Minutes and Exhibits before Public Service Comm. filed. (3 Vol.)
- " 24, " Complainant's request for findings of fact and conclusions of Law filed.
- June 2, " Bond of Plaintiff sur restraining order in \$240,000., without surety, and Order of Court approving bond filed.
- " 21, " Stipulation of counsel amending caption filed.
- Oct. 10, " Opinion, Davis, C. J., Buffington, C. J., and Dickinson, D. J., concurring, granting permanent injunction and making certain findings of fact and conclusions of law filed.

## Docket Entries—Continued

- Oct. 14, 1938. Decree granting perpetual injunction, with costs, and cancelling plaintiff's bond, filed.  
10/14/38 Notice mailed.
- " 22, " Plaintiff's bill of costs filed.
- Nov. 9, " Supplement to bill of costs filed.
- " 18, " Petition of defendant for appeal and Order of Court Allowing Appeal filed. 11/19/38 Notice mailed Conlen, LaBrum, & Beechwood, Esqs.
- " 18, " Assignment of Errors filed.
- " 18, " Defendants' statement of jurisdiction filed.
- " 18, " Stipulation of counsel as to record on appeal filed.
- " 18, " Præcipe for transcript of record on appeal filed.
- " 18, " Citation allowed and issued.
- [fol. 5]
- Nov. 18, 1938. Citation returned: "service accepted" and filed.
- " 22, " Plaintiff's supplemental bill of costs taxed in sum of \$659.44.
- " 28, " Stipulation of Counsel that hearing be considered as upon motion for permanent injunction filed.
- " 28, " Respondent's requests for findings filed.
- " 28, " Bond sur appeal in \$500, with American Employers Insurance Co. surety and Order of Court approving bond filed.
- Dec. 3, " Amended præcipe for transcript of record filed.
- " 5, " Stipulation of Counsel substituting John Sullivan in place of Arthur Colgrove as party defendant, filed.
- " 5, " Statement directing plaintiff's attention to rule 12 of Supreme Court and acceptance of service filed.
- " 5, " Amended præcipe for transcript of record and stipulation filed.



[fol. 6] IN UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1937

In Equity. No. 9893

EDISON LIGHT & POWER COMPANY, a Corporation,  
Complainant,

against

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J.  
BEAMISH, Guy K. Bard, and Donald Livingston, Individ-  
ually and as the Persons Constituting the Pennsylvania  
Public Utility Commission, Respondents

BILL OF COMPLAINT—Filed December 14, 1937

Edison Light & Power Company, the above named com-  
plainant, by Walter Biddle Saul, its attorney, for its bill  
of complaint against the respondents, alleges:

First. That the complainant is a corporation duly organ-  
ized and existing under and by virtue of the laws of the  
Commonwealth of Pennsylvania, and is and for many years  
has been a public utility company engaged in the business  
of generating, transmitting, distributing and selling elec-  
tric energy to the residents of the City of York, Pennsyl-  
vania, and its environs.

Second. That the respondents, Denis J. Driscoll, Thomas  
C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald  
Livingston are and at all times herein complained of were  
the persons constituting the Pennsylvania Public Utility  
Commission, an administrative body created by an act of  
Assembly of said Commonwealth. The respondents are  
sued herein individually in their respective own rights, and  
as the persons constituting said Pennsylvania Public Util-  
ity Commission, and are hereinafter sometimes collectively  
referred to, both in their respective individual capacities  
and in their official capacities as members of said Pennsylv-  
ania Public Utility Commission, as the "Commission".  
The powers and duties of said Commission with respect to  
the regulation of public utilities are prescribed and limited  
by an Act of the Assembly of the Commonwealth of Penn-  
sylvania known as the "Public Utility Law", effective  
June 1, 1937.

Third. That complainant is informed and believes and therefore avers that the respondent Driscoll is a resident of the Borough of St. Marys in the Western District of Pennsylvania; that the respondent Buchanan is a resident of the Borough of Beaver in the Western District of Pennsylvania; that the respondent Beamish is a resident of the City of Harrisburg in the Middle District of Pennsylvania; that the respondent Bard is a resident of the City of Lancaster in the Eastern District of Pennsylvania; and that the respondent Livingston is a resident of the Borough of Media in the Eastern District of Pennsylvania.

[fol. 7] Fourth. That this is a civil suit in equity. That the matters in controversy and the questions herein involved arise under the Constitution and laws of the United States of America. That the amount in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. That this bill of complaint is filed and this suit prosecuted to enjoin and restrain the enforcement of an order of the Commission dated November 30, 1937 and served upon the complainant on or about December 7, 1937 (a true and correct copy of which is annexed hereto, made a part hereof, and marked Exhibit "A"), imposing upon the complainant a reduction in annual gross operating revenues of approximately \$435,000, as specified therein.

Fifth. That on or about November 30, 1937, York Railways Company, parent of complainant, filed its petition for reorganization in the United States District Court for the Eastern District of Pennsylvania in accordance with the terms and provisions of Section 77B of the Federal Bankruptcy Act as amended, and on the same day the said Court entered its order assuming exclusive jurisdiction of the cause and of the property, business and assets of the aforementioned debtor corporation. That the principal assets of said York Railways Company consist of the outstanding capital stock of complainant and certain indebtedness of the latter to said debtor corporation.

Sixth. That the Pennsylvania Public Service Commission, the predecessors of the respondent Commission, on January 27, 1936, instituted on their own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the complainant for electric service; that thereafter numerous hearings

were held before the Commission and its predecessors in office, at which voluminous testimony and exhibits were introduced on behalf of the complainant in proof of the fair value of its property used and useful in the public service and the return thereon which the complainant is entitled to earn, and of the reasonable and necessary allowances required to be made for its operating expenses in determining such return; that certain testimony and exhibits were likewise presented on behalf of the Commission and its predecessors in office, and the introduction of all of such evidence was completed on June 23, 1937; that on the same date argument was had on the question of whether or not the instant case was a proper one for the imposition of temporary rates, at which time the complainant asserted that, all hearings having been completed, there was no reason why a final order should not be entered by the Commission prescribing permanent rates; that notwithstanding these facts, the Commission on July 13, 1937, approximately three weeks after the conclusion of hearings, entered an order directing the complainant to file rate schedules effecting a temporary reduction in annual gross operating revenues of approximately \$435,000; that on July 27th, the Commission rescinded said temporary order and entered another temporary order requiring an identical reduction of approximately \$435,000 in annual gross operating revenues; that thereafter complainant filed its bill of complaint in a Federal Statutory Court assigning various errors and illegalities in said order of July 27, and, after hearing, the said Court on October 15, 1937, granted a permanent injunction restraining the enforcement of the temporary order of the Commission and the rates set forth [fol. 8] therein; that subsequently complainant and the Commission, by stipulation, made a part of the record of the rate proceedings certain additional exhibits containing relevant evidence, and complainant thereafter waived the right to file briefs or to argue questions of law involved and again asserted that there was no valid purpose to be served by any order prescribing temporary rather than permanent rates. That the Commission, nevertheless, and despite the fact that all hearings had been completed and that neither complainant nor the Commission desired to offer any additional testimony or evidence in said rate proceedings, in violation of the plain spirit and intent of Section 310 of the Public Utility Law of Pennsylvania, entered

another order prescribing temporary rates to be charged by complainant, again exacting a reduction in its gross annual revenues in the sum of \$435,000. That by virtue of said action of the Commission in entering another temporary order, complainant was deprived of its right to a judicial review of the provisions of said order, Exhibit A, the Public Utility Law of Pennsylvania not permitting a supersedeas to stay the effectiveness of temporary rates pending an appeal from an order prescribing such rates, said order imposing upon the complainant the necessity of filing schedules prescribing unreasonable and confiscatory rates, and complainant alleges and avers that the action of the respondents in failing and refusing to enter a final order establishing permanent rates is arbitrary and unreasonable, and said order Exhibit A is arbitrary, unreasonable and unlawful.

Seventh. That said order, Exhibit A, purports to be made pursuant to the provisions of Section 310 of Article III of the Pennsylvania Public Utility Law. That said Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, in that:

(1) It purports to empower the Commission to fix, determine and prescribe so-called temporary rates to be charged by public utilities under the jurisdiction of the Commission, which will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service, and thereby to deprive complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(2) It purports to empower the Commission to fix, determine and prescribe such so-called temporary rates by alternative methods and upon alternative bases, pursuant to one of which (sub-paragraph (a)) such rates may provide a return as low as 5% upon the original cost less accrued depreciation of the physical property of such public utilities used and useful in the public service, whereas pursuant to an alternative method or basis (sub-paragraph (b)) such rates are to provide a return of not less than an amount equal to the operating income (as adjusted by the Commission) of such public utilities for the calendar year 1935 or some subsequent year, regardless of whether such

adjusted operating income is greater or less than 5% of such original cost less accrued depreciation; that it, therefore, purports to empower the Commission to fix, determine and prescribe so-called temporary rates which will discriminate unfairly between such public utilities, and thereby deny complainant and all other such public utilities the equal protection of the laws.

[fol. 9] (3) Sub-paragraph (c) of said Section 310 purports to empower the Commission to fix, determine, prescribe and change such so-called temporary rates every month or at any other interval and thereby to deny to complainant and all other such public utilities the right to a fixed return and to prevent complainant and all other such public utilities from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner; the said sub-paragraph (c) fails to provide for notice to such public utilities of any such determination, prescription or change of such so-called temporary rates or an opportunity to be heard with respect thereto and thereby permits the Commission to deprive complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(4) Sub-paragraph (d) of said Section 310 purports to empower the Commission to prescribe such so-called temporary rates for a trial period without giving to such public utilities any notice thereof or an opportunity to be heard with respect thereto, and thereby to deprive complainant and all other such public utilities of their property without due process of law.

(5) Sub-paragraph (e) of said Section 310 does not and cannot provide adequate and complete compensation or reimbursement for or restore the loss occasioned by the confiscation of the property of complainant and all other such public utilities or for the deprivation of the property of complainant and all other such public utilities without due process of law, all as hereinabove set forth.

Eighth. That said Section 310 is in violation of the Constitution of the Commonwealth of Pennsylvania in that Sub-paragraphs (b), (c) and (d) thereof constitute an unlawful delegation of legislative power in contravention of Section 1 of Article II of said Pennsylvania Constitution.



Ninth. That said order, Exhibit A, violates the rights guaranteed to complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives complainant of its property without due process of law, in that said order is not supported by any substantial evidence before the Commission.

Tenth. That said order Exhibit A further violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereof and deprives the complainant of its property without due process of law and without just compensation therefor, in that a fair return on the fair value of the property devoted to the rendition of the public service of complainant is an amount far greater than that remaining to the complainant after effecting the reduction in its annual gross operating revenues provided in said order.

Eleventh. That said order, Exhibit A, violates the rights guaranteed to complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives complainant of its property without due process of law and without just compensation therefor, in that:

(1) The determination by the Commission of the basis for the prescription of temporary rates for complainant is arbitrary, confiscatory and unreasonable, and the amount of \$5,250,000 so determined is far less than the fair value of the property of complainant used and useful in the public service.

(2) The method pursued by the Commission in making its determination of the basis for the prescription of temporary rates to be charged by complainant was erroneous, illegal and arbitrary in that it ignored elements that should be considered in arriving at a valid rate base.

(3) The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to complainant a fair return upon the fair value of its property devoted to the rendition of its public service.

(4) The return which the Commission allowed complainant in fixing its annual net operating income is less than a fair return upon the fair value of the property of complainant used and useful in the public service, and deprives com-

plainant of its property without just compensation therefor and without due process of law.

(5) The Commission erroneously and illegally failed and refused, in estimating complainant's operating expenses for the purpose of determining allowable operating income, to make any allowances for

(a) rate case expense aggregating \$178,374.50 necessarily incurred and paid by complainant in connection with the employment of engineers, auditors and attorneys incident to the preparation and presentation to the Commission of testimony and evidence necessary to be had by the Commission, a part of which was demanded by it, in a proceeding instituted on its own motion challenging the reasonableness of complainant's rates, and a substantial part of which expense was incurred in connection with the preparation and presentation of testimony and evidence in proceedings before a Federal Statutory Court, as well as the prosecution of said proceedings, wherein a previous order of respondents entered in said rate case was enjoined as unlawful;

(b) increased salary expense of approximately \$20,593, required to be paid by complainant to its officers and employees, as provided in a certain resolution duly passed by its Board of Directors on October 28, 1937.

• (6) The Commission erroneously and illegally failed and refused, in estimating complainant's gross annual revenues for the purpose of determining allowable operating income, to make any allowance for the loss of such revenue which will result from the abandonment of the railway service now rendered by York Railways Company, parent of complainant, in York, Pennsylvania, and environs, a petition for the abandonment of such service having been heretofore filed by said York Railways Company with the respondents.

Twelfth. That in said order, Exhibit A, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000; that said sum is far less than the fair value of the property of complainant used and useful in the public service, as will appear from the following:

(1) The reproduction cost new of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of

accounts, excluding working capital and going concern [fol. 11] value, is in excess of \$6,000,000 but erroneously found by the Commission to be only \$5,293,064.

(2) The reproduction cost new less accrued depreciation of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts, excluding working capital and going concern value, is approximately \$5,350,000 but erroneously found by the Commission to be only \$4,737,803.

(3) The original cost of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts, excluding working capital and going concern value, is in excess of \$5,000,000 but erroneously depreciated by the Commission to \$4,094,000.

(4) A fair and reasonable allowance to complainant for working capital is \$164,000 as allowed by the Commission.

(5) A fair and reasonable allowance to complainant for going concern value is not less than \$400,000 but the Commission erroneously made no allowance therefor.

(6) Net additions to complainant's plant and property not included in the foregoing estimates of reproduction and original cost total \$142,851.07 as of September 30, 1937 but the Commission erroneously made no allowance therefor.

Thirteenth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of complainant to such amount that its annual net operating income will be far less than that to which it is entitled under the provisions of Section 310 of the Public Utility Law in that, pursuant to sub-paragraph (b) thereof temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935 or any subsequent year that the Commission may select. That complainant does not have continuing property records and is, therefore, lawfully entitled under said Section 310 to a return of not less than an amount equal to its operating income for either the calendar year 1935 or 1936.



That the application of said order, Exhibit A, will reduce the operating income of complainant to an amount far less than its operating income for either 1935 or 1936.

Fourteenth. That by reason of all the foregoing facts, said order, Exhibit A, is unreasonable, arbitrary and confiscatory and deprives complainant of a reasonable or fair return upon the fair value of the property devoted by complainant to the rendition of its public service, in violation of the Constitution of the United States and the Fourteenth Amendment thereto.

Fifteenth. That the provisions of Section 310 (e) of Article III of said Public Utility Law purporting to provide recoupment where a temporary rate has been less than a reasonable rate prescribed in a final order, are wholly inadequate and illusory in that such provisions do not and cannot provide adequate and complete compensation or reimbursement for the confiscation of complainant's property as hereinabove alleged, and do not and cannot prevent said order, Exhibit A, from depriving it of its property without just [fol. 12] compensation therefor and without due process of law, in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto.

Sixteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, complainant will be deprived of its rights and privileges guaranteed by the Constitution of the United States of America and the Fourteenth Amendment thereto, and will be forced to surrender its constitutional rights and will suffer irreparable injury and damage.

Seventeenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be obliged to comply with the terms and provisions of said order through fear of the severe penalties imposed upon it for non-compliance therewith under the provisions of Sections 1301 and 1302 of Article XIII of the aforementioned Public Utility Law, to wit: the payment of a fine of \$50 for each and every day during which said order is not complied with; that such forced compliance with said order, Exhibit A, will result in the confiscation of the property of complainant, the deprivation of its property without due process of law and

without just compensation therefor, and the denial to complainant of the equal protection of the laws.

Eighteenth. That complainant does not have a plain, adequate, speedy and efficient remedy either at law or in equity in the courts of the Commonwealth of Pennsylvania, because the provisions of Sections 1103 and 1111 deprive complainant of any right to obtain a supersedeas to stay the operation of said order, Exhibit A, on appeal therefrom, or an injunction or restraining order for the purpose of preventing the enforcement of said order, Exhibit A, and the resulting confiscation of complainant's property as hereinabove alleged; that complainant is further deprived of a plain, adequate, speedy and efficient remedy at law or in equity in the courts of the Commonwealth of Pennsylvania by reason of the action of respondents in arbitrarily refusing to enter an order prescribing the permanent rates to be charged by complainant as respondents are authorized and directed to do by the provisions of the Public Utility Law of Pennsylvania.

Nineteenth. That complainant does not have a full, complete and adequate remedy at law.

Wherefore, complainant prays:

(a) That a writ of subpoena issue directed to respondents, commanding them and each of them to appear and answer fully to this bill of complaint, but not under oath, answer under oath being expressly waived.

(b) That respondents, and each of them, individually in their own respective rights and in their official capacities as members of the Pennsylvania Public Utility Commission and their respective successors in office, and all of those acting or claiming to act under their authority or in aid or assistance of them, be enjoined and restrained from in any manner enforcing or attempting to enforce the order of said Commission, Exhibit A; and from instituting or threatening to institute against complainant or any of its officers, directors, servants, agents or employees, any civil or criminal proceedings in any manner or form before any [fol. 13] judge or court of any jurisdiction, based upon any claimed violation by complainant of, or non-compliance with, said order, Exhibit A; and from imposing or attempting to impose upon complainant or any of its officers, di-

rectors; servants, agents, or employees, any penalty for complainant's purported non-compliance with or violation of said order, Exhibit A.

(c) That pending the determination of this suit a temporary injunction be granted forbidding, restraining and enjoining all of the actions on the part of respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(d) That pending the hearing and determination of an application for a temporary injunction as prayed for in paragraph (c) hereof, to be returnable upon order to show cause herein, this Honorable Court grant a temporary restraining order forbidding, restraining and enjoining all of the actions on the part of respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(e) That it be adjudged that the order of said Commission, Exhibit A, is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, and is void and of no force and effect.

(f) That it be adjudged that Section 310 of Article III of said Public Utility Law is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto and is void and of no force and effect.

(g) That complainant have such other and further relief as may be just and proper and equitable in the premises.

And complainant will ever pray, etc.

Dated December 13, 1937.

Edison Light & Power Company, by J. E. Wayne, President, by Walter Biddle Saul, Attorney for Plaintiff, Office and Post Office Address, Packard Building, Philadelphia, Pa. Clarence W. Miles, Baltimore Trust Building, Baltimore, Md.; Morgan S. Kaufman, Mears Building, Scranton, Pa., of Counsel.

[fol. 14] *Duly sworn to by J. E. Wayne. Jurat omitted in printing.*

[fol. 15] EXHIBIT "A" TO BILL OF COMPLAINT

Final Writing

Pennsylvania Public Utility Commission

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION

By the COMMISSION :

On July 13, 1937, the Commission issued an Interim Report and Order prescribing temporary rates in this proceeding. In that report and order the Commission found that temporary rates should be prescribed to provide a return of 6% upon a rate base of \$5,250,000. The Commission discussed the operating revenues and expenses of the company, and ordered a rate reduction pending final determination. By reason of an opinion of the Pennsylvania Superior Court at Pennsylvania Power & Light Company v. Public Service Commission, 193 A. 427, — Pa. Superior Ct. —, rendered July 15, 1937, we issued an Interim Report and Order on July 27, 1937, rescinding our order of July 13, 1937, insofar as it was deemed inconsistent with the cited opinion of the Superior Court. The effect of the July 27, 1937, order was to prescribe a specific schedule of rates in place of those theretofore charged by respondent company, the amount of the ordered reduction and the bases of its computation remaining unchanged. Edison Light and Power Company, respondent, instituted a suit in equity under Section 266 of the United States Judicial Code to prevent the enforcement of the Commission order of July 27, 1937. On October 15, 1937, the Statutory Court, composed of Honorable J. Warren Davis, Circuit Judge, Honorable Albert W. Johnson, District Judge, and Honorable Albert L. Watson, District Judge, enjoined the enforcement of the order, holding that the Commission had insufficiently indicated the bases for its temporary rate findings. Each Judge, in a separate opinion, indicated that he was in sympathy with

speedy relief to consumers from the burden of excessive rates, and that the imposition of temporary rates was a proper and constitutional means of securing such relief. Each opinion also contains suggestions as to the manner in which the Commission should proceed to impose such temporary rates.

As we interpret the opinions, we are required to consider the elements constituting fair value of the property involved, and to discuss these elements, and other pertinent matters such as operating revenues and expenses, in sufficient detail to demonstrate the validity of our conclusions. However, the opinions state that our discussion and consideration need not equal in care, particularity, or thoroughness the treatment to be given the relevant items in arriving at a conclusion as to proper final rates.

We have given careful study to the various suggestions and will, in the following discussion, endeavor to adhere to the principles enunciated by the Court.

#### Reproduction Cost Estimate:

In an application (A. 33811), which was heard by the Commission in 1935, asking approval of the merger and consolidation of York Railways Company and respondent, into a new corporation to be known as York-Edison Company, the applicant placed in the record an inventory and estimate of the reproduction cost new of the property of the present respondent, and of such cost less accrued depreciation as of June 30, 1934. This inventory and appraisal was made by Day & Zimmermann, Inc., the engineering firm which prepared an inventory and appraisal on behalf of respondent for the purposes of the present case.

The direct estimated reproduction cost of Edison Light and Power Company property as shown by the Day & Zimmermann appraisal as of June 30, 1934, introduced into the present record as Commission Exhibit 17, was \$4,188,348 new, and \$3,733,812 new less accrued depreciation. To this direct cost Day & Zimmermann added certain indirect or overhead costs consisting of preliminary and organization 2%; administrative and legal 2%; engineering and supervision 6%; insurance and taxes during construction 1.5%; interest during construction 6%, and cost of financing 7.5%, or total indirect costs of \$1,133,126 applied to the re-



production cost new estimate, and \$1,010,154 applied to the depreciated cost, or a total indirect cost of approximately 27%. In addition, an allowance of \$161,200 was made for working capital, consisting of cash and materials and supplies.

An engineer for the Commission testified in the present record that, based upon his experience, the total allowance for indirect costs should approximate 18%, divided as follows: Preliminary and organization expenses 1½%; administration, legal and taxes 1½%; engineering and supervision 5%; interest during construction 6%; and cost of financing 3%; the total of these allowances is 17%; but cumulative application of the various percentages will give a sum in dollars equivalent to approximately 18 per cent of the direct cost.

At a hearing held on February 17, 1937, the respondent company through Vice President Seelye of Day & Zimmermann, Inc., submitted of record, as respondent's Exhibit 2, an estimate of the reproduction cost new and depreciated of its property as of November 30, 1936, in the amount of \$5,694,494 new and \$5,004,854 new less accrued depreciation—exclusive of working capital and going concern value—as follows:

[fol.17]	Estimated Reproduction Cost	
	New	Less Accrued Depreciation
Organization .....	\$68,812	\$68,812
Steam Generating System .....	1,302,672	1,005,222
Transmission System .....	697,431	652,319
Distribution System .....	1,845,067	1,713,879
Utilization System .....	280,677	248,215
General Property .....	461,629	404,657
Undistributed Construction Expenditures .....	1,038,206	911,750
Total .....	\$5,694,494	\$5,004,854

At a later hearing (March 10, 1937) respondent offered, as its Exhibit 18, a summary of its reproduction cost estimate showing certain adjustments for property not used or

useful in the public service. Its net estimated reproduction cost, exclusive of working capital and going concern value was shown as \$5,572,134 new, and \$4,950,609 depreciated. The summary of this exhibit is:

	Estimated Reproduction Cost New of Useful Property	
	New	Depreciated
Organization .....	\$67,333	\$67,333
Steam Generating System .....	1,216,963	973,850
Transmission System .....	685,296	640,836
Distribution System .....	1,845,067	1,713,879
Utilization System .....	280,677	248,215
General Property .....	460,900	404,567
Undistributed Construction Expenditures:		
Engineering and Superintendence during construction .....	202,001	179,161
Gen'l Officers' and Clerks' salaries during construction .....	44,889	39,813
Gen'l Officers' and Clerks' expenses during construction .....	33,667	29,860
Office Supplies and Expenses during construction .....	11,222	9,953
Law Expenditures during construction .....	22,445	19,907
Injuries and Damages during construction .....	44,889	39,813
Insurance during construction .....	22,445	19,907
Taxes during construction .....	44,889	39,813
Interest during construction .....	298,961	265,614
Cost of Financing .....	290,490	258,089
Sub-total — Undistributed Construction Expense .....	\$1,015,898	901,930
Total .....	\$5,572,134	\$4,950,610

The total overhead items, including organization expenses and undistributed construction expenses, as estimated by

respondent's engineers in relation to the direct costs, are set forth in the following tabulation:

[fol. 18]	New	Depreciated
Direct Costs	\$4,488,903	\$3,981,347
Indirect Costs (exclusive of going concern value and working capital)	1,083,231	969,263
Indirect Costs in percent of direct costs	24.1	24.3

The indirect cost percentages applied, according to respondent's witness, consist of the following allowances:

Organization	1½%
Engineering and Superintendence	4½%
General Officers' and Clerks' Salaries	1%
General Officers' and Clerks' Expenses	¾%
Office Supplies and Expenses	¼%
Law Expenditures	½%
Injuries and Damages	1%
Insurance	½%
Taxes	1%
Interest	6%
Cost of Financing	5½%

It is to be noted that the same engineering firm prepared the estimates for both the merger proceeding and the instant proceeding, although the methods of setting forth the overhead allowances differ in the two appraisals. The Commission engineer followed the method used by respondent's engineer in the merger proceeding.

The chief engineering witness for respondent testified that it is not possible to make a comparison between the specific overhead allowances by the Commission engineer and those set forth by Commission accounts. We will accept for the purposes of this temporary order the view of respondent that such a comparison cannot be made, and will, therefore, compare the total allowances to test the reasonableness thereof.

The estimated direct reproduction cost of useful property as stated by the engineers for respondent as of November 30, 1936, are \$4,488,903 new and \$3,981,347 depreciated. Applying the indirect cost percentages used by the Commis-



sion engineer to these direct costs for the purpose of comparison, we obtain:

	Estimated Reproduction Cost	
	New	Depreciated
Direct Cost .....	\$4,488,903	\$3,981,347
Indirect Costs:		
Preliminary and Organization— 1½% .....	67,334	67,334
Administration, Legal & Taxes— 1½% .....	67,334	59,720
Engineering and Supervision— 5% .....	224,445	199,067
Sub-total .....	4,848,016	4,307,468
Interest during construction—6% .....	290,881	258,448
Sub-total .....	5,138,897	4,565,916
Cost of Financing—3% .....	154,167	136,977
<hr/>		
Total direct and indirect cost .....	\$5,293,064	\$4,702,893
Total indirect cost .....	804,161	721,546
Indirect cost—percent of direct cost .....	17.9%	18.1%

[fol. 19] The indirect costs presented by the Commission's witness represent a liberal allowance in the light of recent appellate court decisions in Pennsylvania. In *Chambersburg Gas Co. v. Public Service Commission*, 116 Pa. Superior Ct. 196, (1935) the Court affirmed the Commission allowance of 3% of the cost of property, including overhead construction costs, as the cost of financing. The other overhead costs allowed included 5% for engineering, except upon land, which was allowed at 2%; 1½% for organization and promotion; 1½% for administration, legal expenses and taxes, and 3% for interest during construction. The total was 13%. In *Cheltenham and Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252, (1936) the Court allowed a total of 14.5% of the direct cost of the physical property for overheads including preliminary, or-

ganization, administration, superintendence, legal expense, interest during construction and cost of financing. The 18.1% figure representing the allowance made by the Commission engineer for indirect cost is approximately 3% in excess of the 14.9% allowed in the case of Cheltenham and Abington Sewerage Co v. Public Service Commission. Although the 18.1% figure represents expert judgment, it may be noted that a 6% allowance has been made for interest during construction based upon a two-year construction period. The 3% allowance approved for this item in Chambersburg Gas Co. v. Public Service Commission, supra, was based upon a one-year construction period.

It is our opinion and we find that, for the purpose of temporary rates, a reasonable total percentage allowance for overheads is 19%. This will result in an allowance of \$756,456 for indirect costs.

The addition of the indirect cost allowance of \$756,456 to the direct cost depreciated of \$3,981,347 gives a total \$4,737,803, which we find represents reproduction cost new less accrued depreciation, for the purpose of determining temporary rates.

#### Original and Book Cost:

Both parties submitted evidence of the original cost of respondent's property, Commission Exhibit 23 reflecting the cost of all property installed from the inception of respondent and its predecessor companies, to June 30, 1936. In addition, the Commission submitted in evidence, as Commission Exhibit 3, a statement of the cost of construction work in progress as of June 30, 1936. Respondent's estimate of original cost is contained in respondent's Exhibit 9 and covers all of the property owned as of November 30, 1936. Respondent also submitted, as its Exhibit 11, a statement showing gross additions and retirements by years from 1887 to December 31, 1936, as abstracted from the books of account of the respondent and predecessor companies, and as adjusted for the elimination of net excess values created in connection with the revaluation of plant and property of predecessor companies. The result thereof will hereinafter be referred to as respondent's estimate of "book cost". The results of the various estimates of

original cost and book cost are summarized in the following tabulation:

[fol. 20] Commission estimate of original cost as of December 31, 1935, exclusive of construction work in progress .....	\$4,449,125.43
Net additions during year ended December 31, 1936 as shown by 1936 annual report .....	109,676.01
Construction Work in progress as of December 31, 1936, as shown by 1936 Annual Report .....	16,666.83
Properties and franchises of 19 non-operating companies .....	701.46
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Commission estimate of Original Cost of all property as of December 31, 1936 .....	4,576,169.73
Respondent's estimate of book cost as of December 31, 1936 .....	4,578,793.00
Respondent's estimate of original cost as of November 30, 1936 .....	\$5,014,944.00
Deduct admitted error page 997 of testimony .....	45,700.00
<hr/>	
	\$4,969,244.00

Respondent's estimate of original cost in its Exhibit 9, includes the arbitrary addition of an item of "Discount and Expense (Cost of Financing)" in the amount of \$349,880. Although respondent's witness states that the actual cost of obtaining capital "would be relevant maybe in connection with the original cost of the property," respondent's evidence nowhere indicates that any studies were ever made of such cost. Under the court decisions the actual cost of financing must be shown to support its inclusion in an original cost estimate. See *Galveston Electric Co. v. City of Galveston*, 258 U. S. 388, 397; *Wabash Valley Electric Co. v. Young*, 287 U. S. 488, 500; *Dayton Power and Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290; *Minneapolis v. Rand*, 285 Fed. 818; *Cheltenham & Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252. Since no such showing has been made, the item should be excluded from the estimate of original cost.

With this adjustment, the various estimates of original and book cost compare as follows:

**Original Cost:**

Commission estimate, as of December 31, 1936	\$4,576,169.73
Respondent's estimate, as of November 30, 1936, excluding arbitrary provision for "Discount and Expense (Cost of financing)"	4,619,364.00

**Book Cost:**

Respondent's estimate, as of December 31, 1936	4,578,793.00
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In none of the foregoing estimates have we excluded any part of the cost of the central generating plant, nor have we made any deduction for donated capital. Deductions for these items will be considered in the final disposition of the case. A consideration of the three stated cost estimates leads us to the conclusion and we find that, for the basis of an order prescribing temporary rates, the original cost of all of respondent's property, before making deductions for any part of the central generating plant, donated capital, or accrued depreciation was \$4,600,000 on December 31, 1936. As hereinbefore set forth, respondent's engineers estimate the accrued depreciation on its property to be equal to about 11% of its estimated reproduction cost new [fol. 21] of the property. Application of this percentage to the \$4,600,000 figure representing original cost of all of the property, results in an amount of \$506,000 to be deducted for accrued depreciation. This deduction gives \$4,094,000 as the original cost of respondent's property less accrued depreciation thereon, as of December 31, 1936. On December 31, 1936, the booked reserve for renewals and replacements, as shown by the 1936 annual report to the Commission, amounted to \$2,231,907. Deduction of this amount from the original cost of \$4,600,000 would show \$2,368,093, as the original cost depreciated of all of the property upon this basis of calculation. However, for the purpose of temporary rates, we find the original cost depreciated to be \$4,094,000.

### Going Concern Value

Although the Pennsylvania Superior Court has discussed the item of going concern value in several decisions, the most recent of which are *Scranton-Spring Brook Water Service Company v. Public Service Commission*, 105 Pa. Superior Ct. 203, *Chambersburg Gas Co. v. Public Service Commission*, 116 Pa. Superior Ct. 196, and *Cheltenham and Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252, no formula for determination of a proper allowance on this account has been prescribed. Furthermore, none of the decisions requires that a separate and distinct allowance be made for this item.

The decisions of the Federal Courts likewise do not require a separate allowance, nor do they indicate any formula for determination of a proper allowance. The law applicable to this item has been summarized by Mr. Justice Cardozo in *Dayton Power & Light Co. v. Ohio Public Utilities Commission* (1934) 292 U. S. 290, 308, 78 L. ed. 1267, 54 S. Ct. 647, 3 P. U. R. (N. S.) 279, 292, in the following words:

“(a) Objection is made that the going value of the appellant's business should have been included in the base.

“The decisions of this court show what going value means (*Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, supra, p. 313), distinguish it from good will, and hold that upon proof of its existence it may have a place in the base upon which rates are to be computed. The Commission was of opinion that there was here no constituent of property that called for separate appraisal apart from the recognition that had been given it as a contributory factor in other elements of value.

“The appellant is a new company, engaged in business for a few years. The value of its physical assets is less than a million dollars. In the brief term of its existence it professes to have added to that value from \$125,000 to \$140,000 by combining the parts into an organism and causing them to work together. The Commission took the view that whatever increment of value had emerged from these sources was sufficiently reflected in the allowance of the cost of developing new business' and in the appraisal of the physical assets as parts of an assembled whole. A like conclusion has been reached by this court in very similar conditions. *Los Angeles Gas & Electric Corp. v. Railroad Commission*



[fol. 22] of California, *supra*, p. 314. Going value is not something to be read into every balance-sheet as a perfunctory addition. 'It calls for consideration of the history and circumstances of the particular enterprise.' *Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, *supra*, p. 314."

The latest pronouncement of the Federal Supreme Court relative to going concern value is contained in *St. Joseph Stock Yards Co. v. U. S.*, 298 U. S. 38, 62, in the following words of Mr. Chief Justice Hughes:

"*Going concern value*.—Appellant's witness, who testified at length at both hearings, followed an elaborate method involving assumptions and speculations of the sort which fail to furnish a sound basis for computing a separate allowance for that element. Compare *Galveston Electric Co. v. Galveston*, 258 U. S. 388, 394; *Los Angeles Gas Corp. v. Railroad Commission*, *supra*, pp. 314, 318, 319; *Dayton Power & Light Co. v. Public Utilities Comm'n*, 292 U. S. 290, 309; *Columbia Gas & Fuel Co. v. Public Utilities Commission*, 292 U. S. 398, 412."

The opinion of Mr. Chief Justice Hughes affirmed the per curiam decision of a Federal Court in *St. Joseph Stock Yards Co. v. U. S.*, 11 F. Supp. 322, 334, wherein the following discussion appears:..

"**Exclusion of Going Concern Value.**

"The contention is there should have been a separate and distinct allowance for 'going concern' value. The Secretary recognized that there was 'an element' of value in an assembled and established plant doing business and earning money over one not thus advanced (finding 159), but said:

" 'Yet, the very impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that, the more a property costs the greater is its going concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-con-

cern value is conceived to be the difference between the present fair value to the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

“160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a [fol. 23]. going concern. The cost of reproduction new of structures is not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without means of transportation of live stock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value, but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made.”

It is clear from a study of the decisions both of the Pennsylvania and the Federal Courts that, although under some circumstances a separate and specific allowance for going concern value may properly be made, nevertheless such an allowance is not necessary if consideration be given to the element of going concern value in arriving at a determination of fair value for rate making purposes. It is also



clear that a specific allowance for this item is not in accord with the most recent and advanced developments of the theory of rate making.

In the present case, the claim of \$400,000 represents the opinion of a witness for respondent, based upon his consideration of the historical development of the predecessor companies. He admitted that determination of the early lag in earnings was difficult, and that the problem was complicated. He also stated that a lag calculation "produced rather fantastic figures for going value which were far beyond what I consider this company possesses in that respect. In arriving at his fair value figure of \$5,500,000, he impliedly approved the inclusion of going concern value not as a separate item, but as an item to be considered in determination of fair value, stating "in considering the matter of fair value all matters which relate to going value must necessarily be considered at the same time. That is to say, these various elements of value which exist in the property."

We have carefully weighed the matter in the light of the testimony of record and of the court decisions, and we are of the opinion that no separate allowance should be made for going concern value. We will, however, consider this element with others in our determination of fair value.

#### Donated Capital:

Commission Exhibit 22 shows that, as of June 30, 1936, consumers of respondent had contributed to it a total of \$267,514.68 for the construction of distribution lines and other property. Respondent's Exhibit 13 shows the amount of such donated capital to be \$199,945 as of December 31, 1936. Since we are now considering the prescription of temporary rates, we will not at this time pass upon the correctness of either amount, but will defer such finding [fol. 24] until final determination. It has consistently been the Commission's policy to exclude from any finding of fair value, capital donated by consumers. To allow such capital as a part of a rate base would impose upon consumers the burden of supplying the capital in the first instance, then penalize them in the future by requiring them to pay rates high enough to provide a return on the value of property first constructed at their own expense and to be replaced at their expense. However, for the purpose of temporary rates, we will make no deduction for capital so donated.

### Central Generating Plant:

A witness for the Commission presented an exhibit allocating the central generating plant between the steam heating company and the electric company based upon the property used and useful and required in supplying the requirements for the service of the heating company. This allocation is made upon the direct costs of respondent's reproduction cost estimate of November 30, 1936, and before respondent had made certain adjustments in its estimate for property not used or useful.

The direct cost of the steam generating system, as shown in the estimated reproduction cost new, was \$1,302,672. Of this sum \$506,513 was allocated to the steam heating company, and \$796,159 to the electric company. The estimate of the depreciated reproduction cost allocated to the electric company is \$563,933. However in considering temporary rates this item will not be reduced.

A commission witness presented an estimate excluding property used exclusively by York Railways Company in the sum of \$80,999, based upon the direct costs of respondent's reproduction cost estimate of November 30, 1936. Respondent attempted to show that the inclusion of this equipment in its rate base is justified. As this point is in dispute, we will include this item for the purpose of temporary rates.

### Working Capital:

The chief engineering witness for the respondent testified that, in his opinion, the company should have a working capital of \$150,000. The Commission chief engineering witness suggested allowance of working capital in the amount of \$164,000. For the purpose of this temporary order, working capital will be allowed in the amount of \$164,000.

### Fair Value:

For the purpose of temporary rates we make the following findings relative to original cost, reproduction cost, and allowable working capital:

Original Cost Depreciated .....	\$4,094,000
Reproduction Cost New, less accrued depreciation .....	4,737,803
Working Capital .....	164,000

[fol. 25] Development of tentative rate bases from the foregoing findings would be as follows:

	Original Cost Depreciated	Reproduction Cost Depreciated
Before working capital	\$4,094,000	\$4,737,803
Working Capital	164,000	164,000
	<hr/>	<hr/>
Tentative Rate Bases	4,258,000	4,901,803

Article III, Section 310 (a) of the Public Utility Law, held constitutional by a majority of the Statutory Court, authorizes the Commission to prescribe temporary rates which will yield not less than a 5% return on original cost, less accrued depreciation, which in this case has been tentatively found to be \$4,094,000. However, the instant record, as now constituted, contains evidence relating to the other elements of value, and we will consider them in making a tentative finding of fair value. The weight to be given to reproduction cost or original cost figures must depend upon the prevailing circumstances in each case. In the instant case we have for consideration, original cost less depreciation of \$4,258,000, and depreciation reproduction cost of \$4,901,803, including working capital, the full cost and value of the central generating plant and property built with capital donated by consumers. From these figures, giving due weight to going concern value and the other factors involved, we find and determine that the fair value of respondent's property for the purpose of prescribing temporary rates is \$5,250,000.

It may be incidentally remarked that this value figure closely approximates the fair value estimate of respondent in the amount of \$5,500,000 reduced by a sum representing the difference between the allowable overhead reproduction costs and those claimed by respondent. The overhead reproduction costs used by respondent total \$969,263, whereas those herein allowed by the Commission total \$756,456, showing a difference of \$212,807. If this difference be subtracted from \$5,500,000 a result of \$5,287,193 appears.

#### Rate of Return:

In attempted support of its claim for a 7½% rate of return, respondent discusses in great detail its relationship with its affiliated public utilities, namely, York Railways

Company, York Steam Heating Company and York Bus Company. Respondent claims that, by virtue of this affiliation, it enjoys substantial benefits and advantages that would not exist if it were entirely independent of the other three companies. Respondent's witness stated that, under ordinary circumstances, a return of 6% would be fair and reasonable for respondent, but urged that the said affiliations resulted in savings in operating expenses which, with certain other items, amounted to about 1½% on the \$5,500,000 claimed as the fair value of the property. He further stated that it was immaterial whether the additional allowance sought was made in the form of an increase in the rate of return or as an addition to the operating expenses, and admitted that the considerations upon which he based the claim for the additional 1½% were more closely related [fol. 26] to operating expenses than to rate of return. It is our opinion that no allowance should be made for non-existent and contingent expenses, either in rate of return or operating expenses, and no such allowance will be included in our tentative computation of the allowable gross operating revenues.

Commission witness McShea submitted extensive testimony and exhibits prepared by him as a result of studies showing contemporary money rates, yields on corporate bonds and preferred stocks, yields on government bonds, and earnings on common stocks of corporations in both regulated and competitive industries. His testimony, which shows generally that the interest cost of money was lower in 1936 and early 1937 than it had been for many years, is uncontradicted by respondent. The details of Mr. McShea's testimony are reflected in Commission Exhibits 32 to 36 inclusive. Respondent made no investigation of interest rates, corporate earnings, or the other important considerations relative to fair return, and we therefore rely upon Mr. McShea's uncontradicted evidence. This evidence tends to show that respondent, upon a conservative basis of capitalization (50% bonds, 25% preferred stock and 25% common stock) could issue bonds and preferred stock at effective interest and dividend rates which, upon the basis of an overall return of 5½% on the tentative fair value of \$5,250,000 would leave attractive earnings on the common stock. However, we will allow a 6% return for the purpose of prescribing temporary rates, and will mod-

ify this allowance upon final determination should such modification appear proper.

### Operation and Maintenance Expenses:

The record contains exhibits showing the cost of operation and maintenance during the fourteen years and nine months ended September 30, 1937. The Commission exhibits cover the period from January 1, 1923 to December 31, 1936, whereas respondent's exhibits cover the year and nine months ended September 30, 1937. For the purpose of temporary rates, we will base our allowance upon the operating results in the twelve months ended September 30, 1937, with such adjustments as appear proper at this time. The cost of operation and maintenance in the twelve months ended September 30, 1937, as reflected by respondent's Exhibit 23, were as follows:

	Charges		Credits	Net Charges
	Operation	Maintenance		
Production System .....	\$118,527	\$15,924	\$96,546	\$37,905
Electricity Purchased .....	644,560	.....	41,714	602,846
Transmission System .....	3,990	5,680	.....	9,670
Distribution System .....	25,426	48,209	.....	73,635
Utilization System .....	10,480	4,929	.....	15,409
Commercial Department .....	64,673	.....	.....	64,673
New Business Department .....	50,927	.....	.....	50,927
General Administrative .....	78,931	.....	.....	78,931
Other General Expenses .....	179,258	5,972	.....	185,230
	\$1,176,772	\$80,714	\$138,260	\$1,119,226

[fol. 27] In our final report and order, consideration will be given to the reasonableness and propriety of the various charges included in the foregoing tabulation. However, at this time we will briefly comment upon certain items which appear questionable.

Respondent owns and operates a central generating plant, which is mainly used for the production of steam for sale to an affiliated steam heating company during the steam heating season. In the twelve months ended September 30, 1937, respondent received from the steam heating company the sum of \$96,546 for the steam sold, as shown by the credit appearing in the above table. This steam is being sold at a price of 42½ cents per thousand pounds condensation. Prior to September 1, 1934, the price was 40 cents per thousand pounds, but, when it appeared that



the cost of production to respondent during the first ten months of 1934 was 40 cents per thousand pounds produced, the price to the steam heating company was increased to 42½ cents per thousand pounds. The cost of 40 cents was based on operating and maintenance charges only, and included no provision for return on the investment, depreciation or other charges such as administration and insurance. A Commission engineer made an exhaustive study of this situation, from which it appears that more than \$500,000 of the depreciated reproduction cost of the entire central generating plant was useful for the purpose of steam generation only. Provision for the elements of return, and depreciation applicable to this property would indicate a total cost per thousand pounds produced far in excess of the price of 42½ cents being received from the steam heating company. However, no adjustment will be made for this item, for the purpose of temporary rates.

Another item which appears questionable is the credit of \$41,714, appearing opposite "Electricity Purchased" in the above tabulation. The record contains evidence tending to show that this credit represents the sale of energy to the affiliated York Railways Company at a rate not compensatory to respondent. We will make no adjustment for this item, for the purpose of temporary rates, but will defer decision until the issuance of our order prescribing final rates.

In the item "Other General Expenses" shown in the foregoing tabulation in the amount of \$185,230, is included the sum of \$127,935, representing charges for legal and technical services incident to the instant rate case. This amount should be disallowed in view of respondent's admission that the present rates are producing in excess of a fair return, and its offer of a reduction. Respondent's patrons have been paying excessive rates for many years, and they should not now be required to reimburse respondent for the cost of defending admittedly excessive rates: *Scranton-Spring Brook Water Service Co. v. Public Service Commission*, 119 Pa. Superior Ct. 117; 143, 144.

The extent of respondent's earnings since 1922 is shown by the annual reports to the Commission, which are of record in this case. In the following tabulation, we show the operating revenues, operating income and the operating income capitalized at 6% by years from January 1,



1922, to December 31, 1936, and for the twelve months ended September 30, 1937; adjusted only to add back to [fol. 28] operating income in 1936 and the twelve months ended September 30, 1937, the rate case expenses included by respondent in the operating expenses:

Year	Operating Revenues	Operating Income	Operating Income Capitalized at 6%
1922	\$734,073	\$270,696	\$4,512,000
1923	878,797	285,379	4,756,000
1924	1,015,454	342,060	5,701,000
1925	1,161,109	393,377	6,556,000
1926	1,269,038	532,450	8,874,000
1927	1,545,628	687,962	11,466,000
1928	1,666,849	734,941	12,249,000
1929	1,787,149	715,918	11,932,000
1930	1,941,864	808,294	13,472,000
1931	1,877,206	728,976	12,150,000
1932	1,838,908	723,109	12,052,000
1933	1,818,904	694,820	11,580,000
1934	1,888,101	723,646	12,061,000
1935	1,894,193	681,851	11,364,000
1936	2,020,043	686,735	11,446,000
12 mos. ending 9/30/37*	2,202,329	734,856	12,248,000

\* From respondent's Exhibit 19B.

No adjustments were made in the above figures for income, gross receipts and other taxes, on the revenues received by respondent in excess of a fair return. The operating income for the year 1936 is shown above at \$686,735, and is after full allowance for all taxes, including taxes paid on excessive revenues. Proper adjustment for this item would increase the operating income to about \$800,000, which is 6% on \$13,300,000.

Respondent offered testimony and exhibits intended to show the annual cost of payroll increases, cost of pension plan, regulatory expenses, and certain other items which it claims should be added to the experienced cost of operation and maintenance in the twelve months ended September 30, 1937, in order to provide adequate future revenue.

These items are shown by respondent's Exhibit 19, as follows:

1. Rental of Property owned by York Railways Company but used by Edison Light and Power Company	\$18,000
2. Payroll increases made effective during 1937	13,488
3. Pension cost	5,819
4. Proportion of annual-salaries of common administrative personnel of respondent and affiliates paid by respondent and reflected on annual basis	20,593
5. Estimate for rate case expense of Commission and regulatory expense to be assessed by Commission under Section 1201 of Public Utility Law	21,792
Total additional claims, per annum	\$79,692

In considering temporary rates, we will allow as operating expenses, the first three items in the above tabulation. However, in final disposition of the case, we may find that all or a portion thereof should properly be disallowed.

The fourth item, amounting to \$20,593, results from a new policy on the part of respondent regarding services rendered by its officers and employees to affiliated companies. By resolution adopted October 28, 1937, the Board of Directors of respondent company provided that the company should "pay in full the present salaries of all its officers and employees without charging or allocating any part thereof to any affiliate company." The resolution also provided that "as rapidly as feasible" the existing practice of having employees of respondent render services to affiliated companies should be discontinued. It is our opinion that the amount claimed as additional expenses, namely, \$20,593, due to the change of policy, should be disallowed at this time. It appears that the various companies will continue to have their offices at the same location or headquarters, under the management and supervision of the same personnel.

Respondent, in assuming these additional operating expenses, is or may be relieving its less prosperous affiliated companies of their fair share of the cost of administering and conducting the general office which is now and has been occupied and operated during many years, for their mutual

benefit. The resolution of respondent's Board of Directors is vague and indefinite as to the time when the change is to become effective, and we are of opinion that, until the change is actually consummated and its reasonableness demonstrated, the resulting increase in expenses should not be reflected in rates.

The fifth item in the above tabulation, amounting to \$21,792, represents respondent's claim for the cost of the Commission's investigation in this case and the general assessment for its proportionate share of the general regulatory expenses of the Commission. The instant case was instituted early in 1936, under the provisions of The Public Service Company Law, which was superseded by the Public Utility Law, effective June 1, 1937. The former law included no provision for assessment of the costs of investigation or general regulatory expenses against public utilities. Since all of the Commission's detailed studies and investigations in this case were made prior to June 1, 1937, it is evident that the cost thereof cannot, under the present law, be assessed against respondent. Therefore, no allowance should be made for this item of expense. However, the Commission may, and will, assess each public utility for its proportionate share of the cost of general regulation. The extent to which this assessment will affect respondent, has not yet been determined. In this connection, we take judicial cognizance of preliminary studies made by the Commission which indicate that the amount assessable against respondent will not exceed 0.3% of its gross revenues, or approximately \$5,300 annually. Other regulatory expenses of an ordinary character not resulting from the assessment provisions of the Public Utility Law or the prosecution of the present case have been included in the allowance for ordinary operating expenses.

We summarize as follows, our allowances for the costs of operation and maintenance for the purpose of temporary rates:

Cost of operation and maintenance during twelve months ended September 30, 1937, exclusive of \$127,935 for rate-case expenses	\$991,291
Rental of property owned by York Railways Company, but used by respondent	18,000
Payroll increases	13,488
Pension Cost	5,819
General regulatory expenses	5,300
Total operation and maintenance	\$1,033,898

## [fol. 30] Taxes:

In the twelve months ended September 30, 1937, respondent's estimated tax liability, set up on the books as a charge to operating expenses, amounted to \$333,650. This charge covered state and federal capital stock taxes, federal and state income taxes, state and local gross receipt taxes, federal energy tax, federal tax on undistributed profits and miscellaneous taxes. Since nearly all of these various kinds of taxes will decrease in amount as respondent's revenues decrease, we have recomputed the tax liability, based upon a reduction of \$435,000 in respondent's gross revenues. In the following tabulation we show a comparison of the amounts charged on the books in the twelve months ended September 30, 1937, with the estimated tax liability as recomputed upon the basis of the \$435,000 reduction in revenue.

Kind of Tax	Charge to Operating Expenses	Adjusted Tax Liability
Federal:		
Income	\$93,779	\$40,000
Undistributed profits	16,366	
Capital Stock	10,034	10,000
Electric Energy	42,437	31,000
State:		
Corporate Loans	555	
Corporate Income	45,485	17,000
Capital Stock	33,000	30,000
Gross Receipts	44,215	36,300
Local Gross Receipts	36,650	31,000
Miscellaneous	11,129	11,100
Totals	\$333,650	\$206,400

For the purpose of temporary rates, we will allow \$206,400 for respondent's total annual tax liability. There are two reasons why we make no allowance for federal tax on undistributed profits; first, the effective imposition of a rate reduction of \$435,000 will reduce the net earnings of respondent below the annual dividend payment on the capital stock as reflected by recent experience, thus leaving no undistributed profits upon which to base such a tax; and, secondly, we do not believe that such a tax, if any is paid, should

be charged as an operating expense. It should be paid out of the allowed return.

### Annual Depreciation:

For the purpose of temporary rates, we will allow for annual depreciation, the sum of \$142,531, this being the exact amount charged on the books as an operating expense in the twelve months ended September 30, 1937.

### Allowable Operating Revenues.

On the basis of the foregoing findings for temporary rates, we find and determine that the annual operating revenues [fol. 31] of respondent should not exceed the sum of \$1,715,629 as shown by the following tabulation:

6% return on \$5,250,000	\$315,000
Operation and Maintenance	1,033,898
Taxes	206,400
Annual Depreciation	142,531

Allowable Operating Revenues	\$1,697,829
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The actual operating revenues amounted to \$2,202,329 in the twelve months ended September 30, 1937, an excess of \$504,500 over the allowable revenue as herein determined. We have allowed and included in the above tabulation all expenses experienced in the twelve months ended September 30, 1937, (except rate case and extraordinary regulatory expenses). However, we are of the opinion that at this time respondent should be required to file a new tariff designed to reduce the gross revenues in the amount of approximately \$435,000 per annum.

Since the promulgation of our interim report and order of July 27, 1937, the respondent company has filed Supplement No. 4 to Tariff Pa. P. U. C. No. 8, effective January 1, 1938, eliminating rate schedules A and B and making certain other modifications in the rate structure. We will disregard Supplement No. 4, since we are here concerned with the presently effective tariff, and Supplement No. 4 would not become effective until January 1, 1938.

No consumption data are available for tariff schedules P-1; TS; SL; and MCY. Lack of the data mentioned prevents construction of specific rates for the classes of service covered by the specified schedules, and we will there-



fore order respondent to apply a factor of 0.70 to effect a reduction of 30% in consumer's bills rendered under these schedules. Such a reduction will convert the present revenues from the rate schedules to which it is applied to a lower figure substantially in proportion to the over-all reduced revenue found proper; Therefore,

Now, to wit, November 30, 1937, it is ordered: That Edison Light & Power Company, respondent, shall, within ten (10) days' of date of service of this order file a tariff supplement effective upon one (1) day's notice to the public and this Commission, effecting a reduction of approximately \$435,000 in its annual gross operating revenues by the establishment of the following rates or rate adjustment:

**Domestic Service:** (This schedule shall be made available to domestic consumers now served under schedules RL; A; B; and HC)

Minimum charge per month, for which consumer shall be allowed 11 kwh. . . . . 50¢

Next	19 kwh. per month	4¢ per kwh.
Next	30 kwh. per month	3½¢ per kwh.
Next	60 kwh. per month	3¢ per kwh.
Next	80 kwh. per month	2½¢ per kwh.
Over	200 kwh. per month	1½¢ per kwh.

[fols. 32-33] **Commercial Service:** (This schedule shall be made available to commercial consumers now served under schedules GL; A; B; and HC)

Minimum charge per month, for which consumer shall be allowed 11 kwh. . . . . 50¢

Next	89 kwh. per month	4¢ per kwh.
Next	200 kwh. per month	3¢ per kwh.
Next	700 kwh. per month	2½¢ per kwh.
Next	1000 kwh. per month	2¢ per kwh.
Over	2000 kwh. per month	1½¢ per kwh.

It is Further Ordered That the following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, shall be cancelled: RL; A; B; GL; and HC.

It is Further Ordered That respondent company shall apply a factor of 0.70 to all net monthly bills covering energy, and all related billed items including connected load,



demand, power factor and service charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing schedules in Tariff Pa. P. U. C. No. 8 which schedules shall be included in the tariff filed pursuant to this order: Tariff Schedules P-1; TS; SL; M; and MCY.

It is Further Ordered That the following schedules of Tariff Pa. P. U. C. No. 8, not hereinabove ordered cancelled or modified, shall remain effective: PR; P-2; P-3; P-5; CBH; AS; OPH; BLI.

Pennsylvania Public Utility Commission (Signed)  
D. J. Driscoll, Chairman.

Attest: — — —, Secretary.

[fol. 34] IN UNITED STATES DISTRICT COURT.

[Title omitted]

AFFIDAVIT OF J. E. WAYNE—Filed December 20, 1937

COMMONWEALTH OF PENNSYLVANIA,  
County of Philadelphia, ss:

J. E. Wayne, being duly sworn, deposes and says:

I am the President of Edison Light & Power Company, the complainant herein. The complainant is a public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of generating, transmitting, distributing and selling electric energy for light, heat and power purposes in the City of York, Pennsylvania, and its environs.

On or about July 21, 1937, the complainant was served with a report and order, dated July 13, 1937, promulgated by the Pennsylvania Public Utility Commission, directing the complainant, within ten days after service of said order, to file a tariff supplement effecting a reduction of approximately \$435,000 in its annual gross operating revenue in the manner specified therein.

On or about July 28, 1937, without any prior notice, the complainant was served with a report and order dated July 27, 1937, promulgated by said Commission which by its express provisions superseded, rescinded and was entered in

lien of the order of the Commission dated July 13, 1937. Thereafter, complainant filed a bill in equity against the Commission in a Federal Statutory Court praying that the Commission be enjoined from enforcing the order of July 27, 1937; and on October 15, 1937, the Court issued a permanent injunction restraining the Commission from enforcing said temporary order and the rates set forth therein. On or about December 7, 1937, the complainant was served with a report and order dated November 30, 1937, promulgated by said Commission (a copy of which is annexed to the Bill of Complaint, and marked Exhibit A), prescribing temporary rates to be charged by complainant, identical with those prescribed in the aforesaid order of July 27, 1937, [fol. 35] which was enjoined as aforesaid, and again exacting a reduction of \$435,000 in the gross annual operating revenues of complainant.

The complainant is aggrieved by said order in the respects and for the reasons set forth in the Bill of Complaint herein and for reasons more fully appearing hereinafter, and has therefore commenced or is about to commence a suit in equity for the purpose of enjoining and restraining the enforcement of said order of November 30, 1937.

I make this affidavit in support of the application of the complainant for a temporary restraining order and injunction as prayed for in the Bill of Complaint herein.

#### • Rate Proceedings Prior to Order Complained of

The Pennsylvania Public Service Commission, the predecessor of the respondent Commission, on January 27, 1936, instituted on its own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the complainant for electric service. Thereafter numerous hearings were held before the Commission and its predecessors in office, at which voluminous testimony and exhibits were introduced on behalf of the complainant in proof of the fair value of its property used and useful in the public service and the return thereon which the complainant is entitled to earn, and of the reasonable and necessary allowances required to be made for the operating expenses of complainant in determining such return. Certain testimony and exhibits were likewise introduced on behalf of the Commission. The introduction of all of such evidence was completed on June 23, 1937 and on the same date argument was had on the question of whether or not the

instant case was a proper one for the imposition of temporary rates, the complainant asserting at that time, that there was no reason why a final order should not be entered by the Commission prescribing permanent rates. Notwithstanding these facts, the Commission on July 13, 1937, approximately three weeks after the conclusion of hearings, entered an order directing the complainant to file rate schedules effecting a temporary reduction in annual gross operating revenues of approximately \$435,000. On July 27th, however, the Commission rescinded its last mentioned temporary order and entered another temporary order requiring an identical reduction of approximately \$435,000 in annual gross operating revenues. The complainant several days thereafter filed its bill of complaint in a Federal Statutory Court assigning various errors and illegalities in the order of the Commission and, after hearing, that Court on October 15, 1937, granted a permanent injunction restraining the enforcement of the temporary order of the Commission, and of the rates therein fixed.

Subsequently, the complainant and the Commission, by stipulation, made a part of the record of the rate proceedings certain additional exhibits containing relevant evidence. The complainant thereafter waived the right to file briefs or to argue questions of law involved, again asserting that there was no valid purpose to be served by any order prescribing temporary rather than permanent rates. [fol. 36] Despite the fact that the Commission has at all times been in possession of all the evidence since June 23, 1937, as supplemented thereafter, upon which it might fix, determine and prescribe final and permanent rates, it has unlawfully failed and refused to prescribe such permanent rates.

#### The Rate Order Complained of

On or about December 7, 1937, complainant was served with a report and order of the Commission dated November 30, 1937, which prescribed temporary rates to be charged by complainant and again exacted a reduction in the gross annual revenues of the complainant in the sum of \$435,000. The rates imposed by this latest order are precisely the same as those attempted to be established by the order of July 27, 1937, which order and the rates fixed thereby were permanently enjoined by the Federal Statutory Court. I am informed by counsel and verily believe and therefore

aver that Sections 1103 and 1111 of the Pennsylvania Public Utility Law prevent a supersedeas from becoming effective pending an appeal from orders of the Commission prescribing temporary rates. The Commission by making the order of November 30, 1937 thus deprived complainant of its right to a judicial review of the provisions of said order, and imposed upon complainant the necessity of filing schedules prescribing unreasonable and confiscatory rates. This action on the part of the Commission, in arbitrarily refusing to enter an order prescribing permanent rates to be charged by the complainant as the Commission is authorized and directed to do by the provisions of the Public Utility Law, is arbitrary, unreasonable, and unlawful.

The Commission's order of November 30, 1937 purports to be made pursuant to the provisions of Section 310 of Article III of the Public Utility Law of the Commonwealth of Pennsylvania. I am advised by counsel and verily believe and therefore aver that said Section 310 is contrary to and in violation of the Constitution of the Commonwealth of Pennsylvania, the Constitution of the United States of America and the Fourteenth Amendment thereto; that the provisions of said Section 310 constitute an unwarranted and unlawful delegation of legislative power to the Commission; and that said provisions further permit the Commission to deprive the complainant and all other public utilities subject to the jurisdiction of the Commission of their property without just compensation therefor and without due process of law, and to deny to the complainant and to said public utilities the right to earn a fair return on the fair value of the property devoted by them to the rendition of their public services; and permit the Commission to discriminate unfairly between such public utilities and to deny to complainant and such other public utilities the equal protection of the laws.

I am further advised by counsel and verily believe and therefore aver that the said order of November 30, 1937 violates the rights guaranteed to the complainant by the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just [fol. 37] compensation therefor and denies to the complainant the equal protection of the laws.

The Commission's order of November 30, 1937 purports to prescribe a temporary reduction in the gross operating

Revenues of the complainant. The order is based upon a finding by the Commission of a rate base which is far less than the fair value of the property of complainant used and useful in the public service, and by the application to such erroneous rate base of a rate of return which is wholly inadequate and which will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of its public service. By the application of this erroneous rate of return to the erroneous rate base, the Commission has limited the return allowed to the complainant, in fixing its allowable net income, to an amount which is far less than a fair return upon the fair value of the complainant's property. Furthermore, the Commission has excluded from the operating expenses of the complainant, in determining its allowable net operating income, any allowances for various actual expenses necessarily incurred by the complainant in the operation of its property and the rendition of its public service. The complainant sells electric light and power to the York Railways Company, parent of the complainant, at an annual profit of \$15,089. The York Railways Company heretofore filed a petition with the Commission seeking authority to abandon its electric railway service. In its determination of said allowable net operating income, the Commission has also failed to make any allowance for the loss of revenue which will be suffered by the complainant as a result of this abandonment.

The order of the Commission requires the filing of a tariff supplement, within ten days from December 7, 1937, effective upon one day's notice, which will bring about a reduction of approximately \$435,000 in complainant's annual gross operating revenues. The so-called "temporary" rate must be continued in effect until a final rate is prescribed by the Commission or until further order of the Commission. The reduction in complainant's annual gross operating revenue is, therefore, temporary in name only. The complainant is required to continue the so-called "temporary" rates prescribed by said order of November 30, 1937 in force in the same manner as a final rate for an indefinite and indeterminate period of time. Consequently, for all practical purposes, the temporary rate is a final rate, and the confiscation of the complainant's property and the unjust discrimination caused by said order of November 30, 1937 is a final and permanent confiscation and discrimination for which no adequate remedy is provided by the Commission or by the



Pennsylvania Public Utility Law, or any other law of the Commonwealth.

### Fair Value of Property

In the said order of November 30, 1937, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000. Said sum is far less than the fair value of the property devoted by complainant to the rendition of its public service. The determination by the Commission is purely [fol. 38] arbitrary and is in no respect supported by any substantial evidence upon which such a finding could be based.

As more fully appears by the annexed affidavit of Theodore E. Seelye, the fair value of the property devoted by the complainant to the rendition of its public service is greatly in excess of said sum of \$5,250,000, and indeed is at least \$5,500,000. No other or lesser determination of such fair value could have been made upon the basis of the evidence before the Commission except by disregarding in whole or in part one or more of the essential elements which must and should be considered in arriving at an estimate of fair value.

The testimony and exhibits introduced in evidence on behalf of the complainant in the proceeding before the Commission demonstrate:

(a) The reproduction cost new of the property of the complainant used and useful in the public service, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts by excluding working capital and going concern value, is in excess of \$6,000,000:

(b) Said reproduction cost new less accrued depreciation is approximately \$5,350,000;

(c) The original cost of said property including property embraced within the general overhead account as prescribed by the Commission's Classification of Accounts, but excluding working capital and going concern value, is in excess of \$5,000,000.

(d) A fair and reasonable allowance for working capital is \$164,000;



(e) A fair and reasonable allowance for going concern value is not less than \$400,000; and

(f) The net additions to plaintiff's plant and property not included in the foregoing estimates of reproduction and original cost total approximately \$142,851.07 as of September 30, 1937.

Upon the basis of this evidence, and taking into consideration each of the elements of value set forth above, it is impossible to arrive at an estimate of fair value of such property of the complainant of less than a sum of \$5,500,000. In fact, by considering only the estimated original cost of such property (approximately \$5,000,000), which is the lowest cost figure above set forth, and giving due consideration to the allowances which must be made for working capital and going concern value (\$164,000 and \$400,000 respectively), a finding of fair value of at least \$5,550,000 is inescapable. By taking into consideration the reproduction cost new less accrued depreciation of such property in addition to reasonable allowances for working capital and going concern value, the foregoing estimate of fair value is increased. In arriving at a rate base of \$5,250,000, therefore, the Commission must have excluded from consideration one or more of the essential elements of value above set forth.

[fol. 39]

#### Rate of Return

In the order of November 30, 1937, the Commission required the reduction of the annual gross operating revenue of the complainant to such an amount that its annual operating income would be far less than that to which it is entitled even under the provisions of Section 310 of the Public Utility Law. Subparagraph (b) thereof requires that temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935, or any subsequent year that the Commission may select. Complainant does not have continuing property records, and is therefore, under said law, entitled to a return of not less than an amount equal to its operating income for either the calendar year 1935 or 1936. The application by the Commission of a rate of return of 6% to its determined rate base of \$5,250,000 in determining allowable return of the complainant will reduce the oper-

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ating income of the complainant to an amount far less than its operating income for either 1935 or 1936.

The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of its public service. The return which the Commission allowed the complainant in fixing its annual operating income is less than a fair return upon the fair value of its property used and useful in the public service, and deprives complainant of its property without just compensation therefor and without due process of law.

### Operating Expenses

In the order of November 30, 1937 the Commission excluded and failed to take into consideration certain expenses of the complainant necessarily incurred by it in the rendition of its public service.

The Commission specifically excluded from operating expenses of complainant any allowance for rate case expense necessarily incurred and paid by complainant in connection with the employment of engineers, auditors and attorneys incident to the preparation and presentation to the Commission of testimony and evidence necessary to be had by the Commission, and a part of which was demanded by it, in a proceeding instituted on its own motion challenging the reasonableness of complainant's rates, and a substantial part of which expense was incurred in connection with the preparation and presentation of testimony and evidence in proceedings before a Federal Statutory Court, and the prosecution of said proceedings, wherein a previous order of the Commission entered in said rate case was enjoined as unlawful. These expenses incurred and paid by complainant amounted in the aggregate to the sum of \$178,374.50. All of them were necessarily incurred and the amount thereof was and is in all respects reasonable. The Commission further neglected to make any allowance in complainant's operating expenses for increased salary expense necessary to be paid by complainant in the sum of \$20,593, to its officers and employees, as provided in a certain resolution duly adopted by its Board of Directors on October 28, 1937.

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### Recoupment

The provisions of Section 310 (e) of Article III of said Public Utility Law do not and cannot provide adequate and

complete compensation or recoupment for the confiscation of the property of the complainant, in that under its provisions, if the rates finally determined are in excess of those provided by the temporary order, the recoupment by the complainant is limited to the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

In determining the fair return on the fair value of the property, many elements—tangible and intangible—must be taken into consideration, and allowances made in order to restore complainant to the position which would have obtained if the basis upon which the rate of return was prescribed was a fair return on the fair value of the property used and useful in the rendition of its public service. Section 310 (e) does not afford complainant reasonable certainty of the recapture of the amount to which it is entitled. The section makes no allowance for the loss of the use of the money which complainant is entitled to earn during the time the temporary rate is in effect, nor any allowance for economic changes, or losses due to inability to attract capital.

The management of the complainant would be severely handicapped in its operations due to the uncertainties incident to a temporary rate, because of its inability to budget its income or expenditures, or to incur commitments to effect the proper and economical operation of its business, or to make extensions and betterments of its facilities or to raise the necessary funds.

By the operation of a temporary rate which fails to provide a fair return on the fair value of the property used and useful in the public service, the complainant is also deprived of the funds necessary to operate its property in an economical manner, is subject to financial embarrassment, impairment of credit, and loss in investment, none of which can be recovered by complainant by the method set forth in said Public Utility Law.

Federal, State and municipal taxes to which your complainant is subject are constantly increasing, but no consideration is given to this by Section 310 of said Public Utility Act, or in said order.

### Other Related Facts

All of the outstanding capital stock of complainant is owned by York Railways Company, a Pennsylvania corporation, to which complainant is also indebted in the sum of \$1,069,008.47. Said York Railways Company is engaged in the operation of a street railway system in the City of York, Pennsylvania, and environs, but recently filed with the Commission an application to completely abandon its service.

On November 30, 1937, York Railways Company filed in the United States District Court for the Eastern District [fol. 41] of Pennsylvania its petition for reorganization pursuant to the provisions of Section 77B of the Federal Bankruptcy Act, as amended. On the same date said Court entered a decree assuming exclusive jurisdiction of the cause and of the property, business and assets of the debtor corporation.

The enforcement of the order of the Commission complained of herein would greatly diminish the value of the outstanding capital stock of complainant and imperil the payment by complainant to York Railways Company of the aforementioned indebtedness and may frustrate or render impossible the consummation of any just and equitable plan of reorganization. The aforesaid capital stock and debt of complainant constitute the principal assets of said York Railways Company.

### The Injunction Prayed for

There can be no doubt that the effect of the order complained of is to confiscate the complainant's property and deprive it of the right to earn a fair return on the fair value thereof.

In such circumstances compliance with these orders would be incompatible with the rendition of the complainant's public service. But the alternative to compliance is the infliction of the severe penalties prescribed by the Public Utility Law. Therefore it is necessary for the complainant to seek relief in the courts, and to protect itself by an application for an injunction.

Wherefore, deponent prays that a temporary restraining order and injunction be granted as prayed for in the Bill of Complaint herein.

J. E. Wayne.



Sworn to before me this 17th day of December, 1937.  
 L. C. Sturtevant, Notary Public. My Commission  
 Expires, Feb. 23, 1939. (Seal.)

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[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF THEODORE E. SEELYE—Filed December 20, 1937

COMMONWEALTH OF PENNSYLVANIA,  
 County of Philadelphia, ss:

Theodore E. Seelye, being duly sworn, deposes and says:

Experience and Qualifications of Day & Zimmermann, Inc.

I am vice president of Day & Zimmermann, Inc., an engineering company consisting of a group of consulting engineers specializing in matters relating to the business and operations of public utility corporations and investigations with respect to the value of the properties and the reasonableness of the rates of such companies. Day & Zimmermann, Inc. has been in existence for thirty-five years and has performed professional services incident to matters of the above character in all parts of the United States and numerous foreign countries. The company has made appraisals of public utility properties amounting to several billions of dollars, and the engineers and accountants associated with its staff have appeared as witnesses before regulatory commissions in many states of the United States and in courts in various Federal jurisdictions.

Experience and Qualifications of Affiant

I have been for the past four years vice president of Day & Zimmermann, Inc., and during that time have testified before various state regulatory bodies and in numerous courts. I have been engaged in matters of rate litigation and valuations concerning the Public Service Company of Northern Illinois, Western United Gas & Electric Company, Commonwealth Edison Company, Syracuse Lighting Company, Harrisburg Railways Company, Cono-

wingo Power Company, and various other public service corporations, and have had occasion to testify in the Federal Courts in connection with proceedings relating to the reorganization of corporations under Section 77B of the National Bankruptcy Act. In addition thereto I have, during my association with Day & Zimmerman, Inc., prepared reports concerning the operations and business of numerous public utility and industrial companies and have supervised the preparation of appraisals of the properties of such companies.

Prior to my present affiliation, I was vice president of Gannett, Seelye & Fleming, Inc. for a period of eighteen years. The business of that company was essentially similar to that of the company with which I am now associated. During the time I was with Gannett, Seelye & Fleming, Inc. in an executive capacity, that corporation owned and operated public utility properties in sixteen states of the United States, as well as in Argentine, Brazil, Chile, and England. In the course of my executive duties with numerous companies owning such properties, I was charged with the control and supervision of matters relating to their management and financing.

Prior to the date when I became associated with Gannett, Seelye & Fleming, Inc. I was Division Engineer of the Water Supply Commission of Pennsylvania and in charge of the preparation of engineering standards with respect to the design and construction of dams in the State of Pennsylvania.

Prior to that I was hydraulic designing engineer for Electric Bond & Share Company.

During the war I was in the Service and attached to the United States Engineering Corps, and subsequent thereto was in charge of the appraisal of war damages to the transportation systems of Belgium including railways, navigation canals and harbors. In the performance of my duties in that connection I was under the War Damages Board of the American Commission to Negotiate Peace, and the amount of the damages above mentioned approximated a total of Three Billion Dollars.

I am at present a member of the American Society of Civil Engineers.

## Character and Scope of Investigation of Properties and Business of Complainant

Day & Zimmermann, Inc. was employed to make an engineering and accounting investigation for the purposes of determining (a) the estimated original cost of the property of the complainant; (b) the estimated reproduction cost new, and reproduction cost new less accrued depreciation of the property of the complainant; (c) an analysis of the operating revenues and expenses of the complainant; (d) the estimated fair value of the property of the complainant used and useful in the rendition of its public service; and (e) the rate of return to which the complainant is properly entitled to earn on the basis of its operations in conjunction with its affiliates.

Day & Zimmermann, Inc. was retained to make the aforementioned investigation in order that complainant might have available the necessary exhibits, documents, data and testimony to present to the Pennsylvania Public Utility Commission in the proceedings instituted by the latter challenging the reasonableness of the rates of complainant, and in which proceedings an order was entered on November [fol. 44] 30, 1937, calling for a reduction in its gross annual revenues in the amount of \$435,000.

The investigation necessitated the use of the services of various members of the organization of Day & Zimmermann, Inc. but all of their work was done under my direct supervision. An analysis of the business, properties and affairs of the complainant continued over a period of approximately eight months and required the services of approximately twenty members of our staff.

## Fair Value of Property of Complainant Used and Useful in the Public Service

Our estimate of the reproduction cost new of the property of complainant used and useful in the public service as of November 30, 1936, was \$5,572,134, and the reproduction cost less accrued depreciation of such property, as of the same date, was \$4,950,609. Our inventory of such property was made by a physical examination and count in the field of the actual units of property in place and for the purposes of the estimate of the aforementioned reproduction cost new and depreciated, we classified all property in

accordance with its appropriate account number or classification as designated by the Uniform Classification of Accounts prescribed by the Public Utility Commission. The last mentioned figures as to the reproduction cost new and depreciated of the property of complainant include only the physical property of the company devoted to the rendition of its public service and the general overheads recognized by the aforementioned Uniform Classification of Accounts, and do not include therein any allowance for working capital and what is commonly denominated as going concern value.

In arriving at the aforementioned estimates, we determined the reproduction cost of the physical property as of about November 30th, 1936 by obtaining quotations from manufacturers of and dealers in the actual materials required to reproduce the given property, and, with respect to labor, adopted the prevailing rates paid to labor in the City of York of the required character or degree of skill. In inviting quotations or bids from manufacturers and dealers, the latter were requested to submit the same on the basis of actual competitive prevailing market prices and to allow the benefit of any discount to which complainant would be entitled by virtue of the fact that it purchased in quantity amounts.

To the direct costs of the property as above described, we added the general overheads described in the Uniform Classification of Accounts of the Commission. These overheads represent what might be described as owner's costs, as opposed to the direct costs above enumerated. By the term "owner's costs" I mean such costs as would be incurred by the owner directly in building a public utility system, as distinguished from costs required to be paid by the owner to the contractor, who erects the structures and puts the various units of physical property in place. Among such owner's costs are organization expense, interest during construction, administrative, legal and kindred items. [fol. 45] In the first instance, our estimate of the reproduction cost new and depreciated was predicated on prices prevailing as of November 30, 1936, but subsequently such estimate was translated into prices prevailing on or about June 1, 1937. This was done in order to show the extent to which such reproduction cost estimate, as first determined, had been affected by the differential in prices between No-

vember 30, 1936 and a date coincident with the termination of the aforementioned rate proceedings. Such a study showed that between November 30, 1936 and on or about June 1, 1937, the estimated reproduction cost new of the property of complainant increased to \$6,019,832. We further found that the estimated reproduction cost less accrued depreciation of the property of complainant as on or about June 1, 1937, was approximately \$5,350,000, as compared to \$4,950,609 as of November 30, 1936.

The Commission, in its order of November 30, 1937, in making its determination of the reproduction cost new of the property of complainant, accepted the direct costs as contained in the estimate of Day & Zimmermann, Inc., but has substituted substantially the general overheads suggested by a member of its Engineering Bureau in his testimony in the rate proceedings. In support of this conclusion, the Commission referred to two opinions of the Superior Court of Pennsylvania. The record of the proceedings before the Commission discloses that the Commission's witness testified that he had made no inspection of the property of complainant nor formed any independent opinion as to its value. In my opinion, appropriate allowances for general overheads can only be determined in relation to the value of the physical property in question and the circumstances incident to its construction. The aforementioned court opinions referred to by the Commission relate to sewer and gas properties of relatively small value and, in my opinion, the overheads which may be properly allowable in such instances, have no relation to those proper with respect to the electric property of complainant.

The reproduction cost estimates above described are based on an inventory of complainant's property as it existed on November 30th, 1936. According to complainant's books, net additions to its property from that date to September 30, 1937 amounted to \$142,851.07.

In determining the depreciation to be applied to the estimate of reproduction cost new, we arrived at the same as a result of a personal inspection of the various units of property by a number of our expert representatives and engineers whose past experience and qualifications peculiarly fitted them to make such a determination. Those representatives, in forming their respective judgments as to the amount of depreciation to be so applied, considered the physical condition of the particular units of property, the ap-



proximate dates of installation and the manner in which the same had been maintained. In addition to the aforementioned factors, the said representatives further considered the degree of obsolescence and the adequacy or inadequacy of each of the particular units of property.

Our estimate of the original cost of the property of complainant used and useful in its public service as of November 30, 1936 was \$4,969,000, and according to the books of the [fol. 46] company, this amount would be increased by the aforementioned net additions from November 30, 1936 to June 30, 1937 in the sum of \$142,851.07. For the purpose of determining our estimate of original cost, we adopted the actual costs of materials and labor experienced by the company as of the respective dates of installation and applied the same to the inventory of complainant's property as of November 30, 1936. In such instances where the books failed to disclose such actually experienced costs, we applied prices of materials prevailing as of the particular dates of installation and prevailing costs of labor in York, Pennsylvania, as of the date of such installations.

In its above mentioned order, the Commission, in making its determination of the original cost of the property of complainant, accepted the estimate of Day & Zimmermann, Inc., less an item therein in the sum of \$349,880 for cost of financing. The Commission then deducted the sum of \$506,000, representing purported depreciation.

The Commission stated as its reason for eliminating the aforementioned item of cost of financing that "respondent's evidence nowhere indicates that any studies were ever made of such cost". This is not the fact. Our estimate for this item was based, among other things, upon a study of complainant's experience so far as existing records permitted. Reference to Company Exhibit No. 1, which includes a chart portraying the cost of money experienced by York Railways Company the parent of complainant, from 1909 to 1925, and the distribution of the proceeds realized from the sale of its securities, demonstrates that \$2,407,175 was realized from the sale of bonds in the principal amount of \$2,706,000, and that the aggregate discount was hence \$298,825. It is therefore apparent that the experienced cost of financing of complainant's parent over the period in question and for the securities mentioned was something in excess of 11%, or approximately 31½% in excess of our estimate of the cost of financing included in our original cost estimate.

Said exhibit further shows that of the aforementioned proceeds of \$2,407,000, the sum of \$1,027,000 was expended for construction of the property of complainant.

In my opinion, the cost of financing of complainant, had it been required to raise its necessary capital requirements through the public sale of securities, would have been at least equivalent to that actually experienced by its parent in raising funds for the complainant. This opinion is based upon the fact that during the years mentioned above, the parent company was a prosperous corporation with a far better credit standing than that of complainant, and during the earlier years its business was less speculative in character than that of complainant.

We made no attempt to depreciate the original cost of the property of complainant. Because such cost is mere history, and represents the actual investment made by complainant, it is not subject to depreciation; for even though the property should ultimately disappear, the amount originally expended to create it would remain the same. Hence, in my opinion, there is no computation that can be made which would indicate that the amount of the investment is at any time less than that originally put into the property. In [fol. 47] attempting to make such a computation, however, the Commission applied a percentage to the original cost estimate of Day & Zimmermann, Inc., equal to the average of depreciation as determined in the latter's reproduction cost estimate. Reference to Company Exhibit No. 2, containing the estimates of Day & Zimmermann, Inc., of the reproduction cost new and depreciated of the property of complainant, will disclose that the accrued depreciation amounted to \$621,524, which happened to be 11% of the estimated reproduction cost new. This percentage was merely the weighted average of the depreciation as determined for the various units of property. The Commission, for the purpose of determining the so-called depreciation of original cost, deducted from such cost a sum equivalent to 11% thereof. Such a computation is, in my opinion, erroneous not only because original cost cannot be depreciated, but for the further reason that the property of complainant was built over a long period of time at various price levels. The accrued depreciation for the reproduction cost which produced the weighted average of 11% was, on the other hand, based upon an established price level and hence the

use of that percentage in connection with original cost is, in my opinion, fallacious.

By way of illustration of this erroneous computation, property embraced within two account classifications "General Office Structures" included in Account No. 278, and "Other General Structures" in Account No. 279, may be taken as examples. The weighted average depreciation for the property in these two accounts in our estimate of reproduction cost new is 12.3%. If we apply the same percentages of depreciation, forming a part of the weighted average, to the same two accounts in the original cost estimate, the weighted average of depreciation would become 13.5%, thus demonstrating the fallacy of the Commission's application of the percentages of depreciation derived in connection with reproduction cost estimates, to original cost.\* If the comparison had been based on individual units of prop-

\* It will be noted from the following computation that if the percentages of depreciation derived from the relation of the amounts of accrued depreciation to the amounts of reproduction cost new of both accounts are applied to the amounts of original cost in both accounts, the resulting product of so-called depreciated original cost aggregates a sum equal to 13.5% of the original cost of the property in the accounts, whereas the weighted average of actually accrued depreciation, applying to the reproduction cost new, is only 12.3%.

	Reproduction Cost New <sup>1</sup>	Accrued Depreciation <sup>1</sup>	Percentage of Depreciation
Acct. 278	110,505	16,576	15.
Acct. 279	62,378	4,783	7.6
Total	173,083	21,359	12.3

	Original Cost <sup>2</sup>	Percentage of Depreciation	Accrued Depreciation
Acct. 278	93,724	15.	14,054
Acct. 279	24,121	7.6	1,833
Total	117,845	13.5	15,887

<sup>1</sup> As appears by Company Exhibit No. 8.

<sup>2</sup> As appears by Company Exhibit No. 9.

erty instead of whole accounts, the disparity would be even greater.

[fols. 48-49] In our further conception of the fair value of the property of Edison Company, we concluded that the going concern value of the company was not less than \$400,000. Among the factors considered in reaching this conclusion were (a) the character of the territory served by the company, including the wide diversity of industries represented therein; (b) the sound economic record of the territory served, as indicated by its complete lack of bank failures during the recent economic depression, evidencing the character of the population, their well-being and the ability of the territory to carry on under adverse circumstances; (c) the ability of the company to earn a reasonable return under low rates; (d) the efficiency of the management of the company as indicated by the condition of its property and the high character of its service; (e) an adequate available power supply; and (f) the sound capital structure of the company as indicated by its low capitalization and the fact that it has no funded debt.

After a further consideration of the aforementioned elements of fair value, that is to say, the original cost of the property of Edison Company, the reproduction cost new of such property, the depreciated reproduction cost of such property, its necessary working capital and its going concern value, we concluded that the fair value of the property of the Edison Company used and useful in the public service was not less than \$5,500,000.

Theodore E. Seelye.

Sworn to before me this 17th day of December, 1937.

L. C. Sturtevant, Notary Public. My Commission Expires Feb. 26, 1939. (Seal.)

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO BILL OF COMPLAINT—Filed January 12, 1938

Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald Livingston, individually and as constituting the Pennsylvania Public Utility Commis-

sion, respondents, by Edward Knuff, Esq., and Samuel Graff Miller, Esq., Attorneys for respondents, for their answer to the bill of complaint herein respectfully show to the Court and allege:

First. The allegations of the first paragraph of the bill of complaint are admitted.

Second. The allegations and statements of the second paragraph of the bill of complaint are admitted.

Third. The allegations on information and belief of the third paragraph of the bill of complaint are admitted, excepting the allegation respecting respondent Guy K. Bard. It is averred, that said respondent Guy K. Bard is a resident of the Borough of Denver in the Eastern District of Pennsylvania.

Fourth. The allegations of the fourth paragraph of the bill of complaint are admitted.

Fifth. The allegations of the fifth paragraph of the bill of complaint are neither admitted nor denied, respondents having no information permitting admission or denial. If the said allegations are deemed material, respondents ask proof thereof.

[fol. 51] Sixth. The allegations of the sixth paragraph of the bill of complaint are admitted, insofar as they involve statements of fact.

It is denied that the issuance of the supplemental report and order dated November 30, 1937, violates the spirit or intent of Section 310 of the Public Utility Law, and, on the contrary, it is averred that the said supplemental report and order entirely conforms to the letter, spirit and intent of said Section 310.

It is denied that the action of respondents in not entering a final order establishing permanent rates is arbitrary and unreasonable, and, on the contrary, it is averred that said action is proper and reasonable, since adequate consideration of the many and complicated issues involved requires a considerable period of time, proper consideration of the changed conditions revealed by the additional exhibits made part of the record by stipulation on November 15, 1937, does not permit the issuance of a final order establishing permanent rates, and the consumers of complainant should not be deprived of the benefit of reasonable reductions in rates,



pending proper consideration and determination of permanent rates.

It is denied that the order of November 30, 1937, attached to the bill of complaint as Exhibit "A" is arbitrary, unreasonable or unlawful, and, on the contrary, it is averred that, the said order is proper, fair, reasonable and lawful.

**Seventh.** The allegations of the seventh paragraph of the bill of complaint to the effect that the provisions of Section 310 of Article III of the Public Utility Law are contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto are denied.

(1) Sub-paragraph (1) of the seventh paragraph of the bill of complaint alleges that the cited section purports to empower the Commission to fix, determine and prescribe temporary rates to be charged by public utilities, which rates will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service. The conclusion is drawn that thereby complainant and all other public utilities are deprived of their property without just compensation therefor, and without due process of law.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same.

(2) It is denied that, as alleged in sub-paragraph (2) of the seventh paragraph of the bill of complaint, paragraphs [fol. 52] (a) and (b) of the said Section 310 of the Public Utility Law purport to empower the Commission to fix, determine, or prescribe temporary rates by alternative methods and upon alternative bases which will discriminate unfairly between public utilities. The conclusion is drawn that thereby complainant and all other public utilities are denied the equal protection of the laws.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same. In further answer the respondents aver that paragraph (b) of Section 310 of the Public Utility Law is not here involved in any manner, since the respondents, in issuing the temporary rate order here

involved did not proceed under said paragraph (b) but under paragraphs (a), (c) and (e) of said Section.

(3) It is alleged in sub-paragraph (3) of the seventh paragraph of the bill of complaint that paragraph (c) of Section 310 of the Public Utility Law purports to empower the Commission to fix, determine, prescribe and change temporary rates every month or at any other interval. The conclusion is drawn that thereby complainant and all other public utilities are denied the right to a fixed return and prevented from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner:

In answer thereto, the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, respondents deny the same.

It is further alleged in sub-paragraph (3) of the seventh paragraph of the bill of complaint that paragraph (c) of Section 310 of the Public Utility Law fails to provide for notice and hearing to be given to public utilities with respect to the determination, prescription or change of temporary rates. The conclusion is drawn that thereby the Commission is permitted to deprive complainant and all other public utilities of their property without just compensation therefor and without due process of law.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same.

[fol. 53] In further answer thereto respondents aver that Section 310 (c) of the Public Utility Law, as appears by Exhibit "A" attached hereto provides that "The Commission may, in the manner hereinbefore set forth, fix, determine and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the Commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined and prescribed."

It is further averred in answer that the above quoted paragraph provides that temporary rates may be fixed, deter-

mined, or prescribed only "in the manner hereinbefore set forth," and, since both of the preceding paragraphs of Section 310, to wit, paragraphs (a) and (b), as appears by Exhibit "A" attached hereto, specify that reasonable notice and hearing must precede prescription of temporary rates, reasonable notice and hearing are necessary under Section 310(c).

It is further averred in answer that the said requirement of reasonable notice and hearing was fully observed and complied with prior to the issuance of the Supplemental Report and Order of November 30, 1937.

(4) It is denied that the allegations of sub-paragraph (4) of the seventh paragraph of the bill of complaint are relevant. The Commission, in issuing the supplemental temporary rate order here involved, did not proceed under the provisions of paragraph (d) of Section 310 of the Public Utility Law. Hence, that paragraph of Section 310 providing for the prescription of temporary rates is not involved in any manner. If any of the allegations of sub-paragraph (4) of the seventh paragraph of the bill of complaint are deemed relevant or material herein, such allegations are hereby denied.

(5) The allegations of sub-paragraph (5) of the seventh paragraph of the bill of complaint, to the effect that the provisions of paragraph (e) of Section 310 of the Public Utility Law do not provide proper compensation for possible loss to the public utility occasioned by the prescription of temporary rates, are denied. On the contrary, it is averred that Section 310 (e) of the Public Utility Law, as appears from Exhibit "A," attached hereto, affords the complainant, upon final determination of the rate proceeding, adequate and complete compensation or reimbursement in case the said temporary rates so fixed by the Commission are too low.

It is further averred that, in view of these specific and clear provisions for recoupment of any possible loss which [fol. 54] may be suffered by reason of the imposition of temporary rates, there can be no tenable claim that confiscation of the property of complainant or unconstitutional deprivation of such property will result.

Eighth. The allegations of the eighth paragraph of the bill of complaint are denied, and it is averred that paragraphs (b) and (d) of Section 310 of the Public Utility Law

are not involved in this proceeding, and therefore the allegations contained in the eighth paragraph of the bill of complaint, with reference to the said paragraph, are irrelevant and immaterial in this proceeding.

Ninth. The allegations of the ninth paragraph of the bill of complaint are denied. On the contrary, it is averred that the order here involved is supported by sufficient evidence as will more fully appear in the eleventh paragraph of this answer.

Tenth. The allegations of the tenth paragraph of the bill of complaint are denied for reasons appearing in the eleventh paragraph of this answer.

Eleventh. The allegations of the eleventh paragraph of the bill of complaint are denied. Respondents make specific answer to the said allegations as follows:

(1) It is denied as alleged in sub-paragraph (1) of the eleventh paragraph of the bill of complaint that the amount of \$5,250,000 taken by the Commission as a basis for computation of allowable temporary rates is arbitrary, confiscatory, unreasonable, illegal or unsupported by the evidence. On the contrary it is averred that the computation of allowable temporary rates upon this basis is supported by the evidence, and is just and reasonable and permits complainant to earn a proper and fair return upon the fair value of its used and useful property.

(2) The allegations of sub-paragraph 2 of the eleventh paragraph of the bill of complaint are denied and, on the contrary, it is averred that the method used by the respondents in making their determination of the basis for the prescription of temporary rates to be charged by complainant was not erroneous, illegal and arbitrary, but included all the elements that properly should be considered in arriving at a valid rate base.

(3) The allegations of sub-paragraph (3) of the eleventh paragraph of the bill of complaint are denied and, on the contrary, it is averred that the 6% rate of return allowed by the respondents is adequate and proper for the purpose of temporary rates, and permits complainant to earn a fair return upon the fair value of its used and useful property.

[fol. 55] (4) The allegations of sub-paragraph (4) of the eleventh paragraph of the bill of complaint are denied and,

on the contrary, it is averred that the return allowed complainant in fixing its annual net operating income affords complainant a proper, just and fair return upon the fair value of its property used and useful in the public service, and is not confiscatory of the said property, nor does it deprive complainant of its property without just compensation or without due process of law.

(5) The allegations of sub-paragraph (5) of the eleventh paragraph of the bill of complaint are denied, and in specific answer thereto it is averred that:

(a) the allowance of rate case expenses to a utility in a proceeding resulting adversely to the utility is contrary to law, and no segregation of rate case expense as between proceedings before the Pennsylvania Public Utility Commission and before a Federal Statutory Court was submitted by complainant. It is therefore averred that the allowance made by the Commission for general regulatory expenses for the purpose of temporary rates is proper and adequate. If complainant is injured by a failure to allow rate case expense incurred before a Federal Statutory Court, this injury can be repaired when permanent rates are prescribed.

(b) It is averred that the Commission improperly disallowed problematical increased salary expense of approximately \$20,593 claimed by virtue of a resolution of the Board of Directors of complainant, dated October 28, 1937. It is further averred that if and when such increased salary expense is reasonably and properly incurred by complainant, allowance for the said expense may properly be made.

(6) The allegations of sub-paragraph (6) of the eleventh paragraph of the bill of complaint are denied, and on the contrary it is averred that York Railways Company has not abandoned its railway service and therefore no allowance for any problematical loss of revenue incident to such possible abandonment could or can properly be made. It is further averred that if and when such loss occurs and is properly shown, allowance may be made therefor.

Twelfth. The allegations of the twelfth paragraph of the bill of complaint, with the exception of that contained in sub-paragraph (4) thereof, are denied. In specific answer to the consecutive sub-paragraphs thereof it is averred as follows:



(1) The difference between the \$6,000,000 alleged by complainant as the minimum reproduction cost new of its [fol. 56] property, excluding working capital and going concern value, and the \$5,293,064 found by the Commission to represent such reproduction cost new of said property is due to a difference in overhead percentages used by complainant and by respondents, as is fully explained in the report and order printed as Exhibit "A" attached to the bill of complaint.

It is further averred that the overhead percentages used by respondents are proper, fair and reasonable.

(2) The difference between the figure of \$5,350,000 alleged by complainant to represent the approximate reproduction cost new less accrued depreciation of its property, excluding working capital and going concern value, and the \$4,737,803 figure found by respondents to represent such reproduction cost new results from a difference in overhead percentages. It is further averred that the overhead percentages used by respondents are proper, fair and reasonable.

(3) The depreciation of an original cost figure for the purpose of arriving at fair value is in accordance with the law. It is further averred that the amount of \$4,094,000, found by respondents to represent original cost of the property of complainant, reduced by a proper depreciation figure and excluding working capital and going concern value represents one just, proper and adequate basis for determination of fair value.

(4) The allegation of this sub-paragraph is admitted.

(5) The respondents made a proper, fair and reasonable allowance to complainant for going concern value, although such allowance was not made in a specific amount. It is further averred that the law does not require a separate allowance for this item.

(6) It is admitted that no allowance for net additions to the plant and property of complainant totalling \$142,851.07, as of September 30, 1937, was made, but it is denied that failure to make such an allowance constitutes error. It is further averred that respondents deducted no depreciation accruing during the period November 30, 1936 to September 30, 1937, and therefore had no occasion to add net additions to property.

Thirteenth. The allegations of the thirteenth paragraph of the bill of complaint, that complainant is lawfully entitled, by reason of the provisions of Section 310 (b) to a return of not less than an amount equal to its operating income for the calendar years 1935 or 1936 are denied. In answer thereto it is averred that the Commission in making the temporary rate order here involved printed as Exhibit "A" attached [fol. 57] to the bill of complaint, proceeded under paragraphs (a) (c) and (e) of Section 310 of the Public Utility Law, and therefore paragraph (b) has no relevancy or materiality in this case.

Fourteenth. It is denied that, as alleged in the fourteenth paragraph of the bill of complaint, the order of the Commission, printed as Exhibit "A" attached to the bill, is unreasonable, arbitrary or confiscatory or deprives complainant of a fair return upon the fair and reasonable value of the property devoted by complainant to the rendition of its public service, in violation of the Constitution of the United States and the Fourteenth Amendment thereto. On the contrary, it is averred that the said order of the Commission is just and reasonable and permits complainant to earn a fair return upon the fair value of its property used and useful in the public service.

Fifteenth. The allegations of the fifteenth paragraph of the bill of complaint are denied. On the contrary, it is averred that the provisions of Section 310 (e) of the Public Utility Law afford complainant full and adequate protection, not only against unconstitutional deprivation of its property, but also against any possibility of loss of proper revenue. It is further averred that the temporary order of the Commission here involved is just and reasonable, is sustained by the evidence and permits complainant to earn a just and proper return upon the fair value of its property. It is further averred that Section 310 (e) of the Public Utility Law safeguards in just and full measure the rights of complainant under the Constitution of the United States and the Fourteenth Amendment thereto and represents the epitome of protective legislation.

Sixteenth. The allegations of the sixteenth paragraph of the bill of complaint are denied. In answer thereto it is averred that the temporary rate order of the Commission

here involved is just and reasonable, is supported by the evidence, and permits complainant to earn a fair and just return upon the fair value of its property.

Seventeenth. The allegations of the seventeenth paragraph of the bill of complaint are denied. In answer thereto, it is averred that the said order printed as Exhibit "A" attached to the bill of complaint, is reasonable, proper and just, and permits complainant to earn a fair return upon the fair value of its used and useful property, and that complainant should be obliged to comply with the terms and provisions of said order.

Wherefore, your respondents, showing that the allegations of the bill of complaint herein are argumentative and erroneous, and fail to present an adequate or proper basis for the relief prayed for, and that the bill of complaint [fol. 58] should therefore be dismissed, pray that the prayer of the bill asking a temporary injunction and the prayer of the bill asking a permanent injunction be severally and collectively refused.

And respondents will ever pray, etc.

Dated January 7, 1937.

Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, Donald Livingston, Pennsylvania Public Utility Commission, by Samuel Graff Miller, Assistant Counsel; Edward Knuff, Counsel, Attorneys for Respondent, North Office Bldg., Harrisburg, Pennsylvania.

[fol. 59]

EXHIBIT "A" TO ANSWER.

Paragraphs (a) (c) and (e) of Section 310, Article III, of the Public Utility Law

"Section 310. Temporary Rates. (a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of

such rate proceeding. Such temporary rates so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

. . . . .

“(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

. . . . .

“(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a [fols. 60-61] temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.”

## [fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

## ANSWER OF INTERVENORS TO BILL OF COMPLAINT—Filed January 17, 1938

To the Honorable the Judges of the Said Court:

The Utility Consumers League of the City and County of York, Pennsylvania, by Willis E. Ramsay, President and Herbert B. Cohen its attorney answers the Bill of Complaint of the above named Complainant as follows:

First. Paragraph first of the said bill of complaint is admitted.

Second. Paragraph second of the said bill of complaint is admitted.

Third. Paragraph third of the said bill of complaint is admitted.

Fourth. Paragraph fourth of the said bill of complaint is admitted.

Fifth. Paragraph fifth of the said bill of complaint is neither admitted nor denied, intervenors having no information permitting admission or denial. If the said allegations are deemed material, intervenors ask proof thereof.

Sixth. Paragraph sixth of the said bill of complaint is answered as follows:

1. It is denied that the temporary order issued by the respondents is in violation of the plain spirit and intent of Section 310 of Article III of the Pennsylvania Public Utility Law, and it is affirmatively averred that the plain spirit and intent of the Act is to prevent the hardship and injustice resulting to the consumers from long periods of delay in realizing the fruits of a justifiable reduction of rates.

(a) The abuses sought to be remedied by the Pennsylvania Legislature through the enactment of the Pennsylvania Public Utility Law has been characterized by the instant rate proceedings against the Edison Light & Power Company. As long ago as January 27, 1936, the Pennsylvania Public Service Commission, predecessors of the Public Utility Commission, after having been requested by the



Utility Consumers League, intervenors herein, instituted on its own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the Edison Light & Power Company, complainant herein.

(b) That as long as March 11, 1937, Joseph E. Wayne, President of the complainant company, in one of the hearings before the Pennsylvania Public Service Commission, predecessors to the Public Utility Commission, in answer to a question submitted to him by Clarence W. Miles, Esquire, of counsel for the said complainants, said, "The Edison Light & Power Company has offered to reduce its rates in the amount of \$250,000 annually," and that Clarence W. [fol. 63] Miles, Esquire, at the same hearing, in stating the position of the instant complainant, said that the revenues of the Edison Light & Power Company could be reduced by the sum of \$250,000 and leave an amount sufficient to continue the operation of the four companies as operated in 1936.

(c) Notwithstanding the foregoing admissions that the present excessive rates of the complainant company are far in excess of a reasonable rate of return on the fair value of its property, relief has not been forthcoming to the consumers and rate payers of the complainant, and on the contrary the complainant company has continued to collect excessive rates from the rate payers of the City of York and its environs.

(d) The Pennsylvania Public Utility Law and the intent of the Pennsylvania Legislature in its passage, sought to accomplish for the rate payers of the Commonwealth instant relief from excessive and exorbitant charges.

(e) It is specifically averred that a temporary order, in view of the above facts, is an order which will carry immediate relief for such excessive overcharges.

(f) The conduct of the complainant company has been highly unconscionable in view of its foregoing admissions and is exactly the type of conduct which Section 310 of the Pennsylvania Public Utility Law sought to avoid in providing for the issuance of temporary rates by the Public Utility Commission.

(g) This order, Exhibit A of said bill of Complaint, affords the consumers of the complainant company immedi-

ate relief and will permit the Public Utility Commission, by observance of the effect of the temporary order, by further investigations and deliberations of the facts presented at the various hearings in the instant rate proceeding, to enter a more proper and complete final order establishing a permanent reduction of rates for the said complainant company, which from all indications will be an even greater reduction than has been ordered by the report and order Exhibit A of said bill of complaint.

-2. It is denied that the virtue of the said action of the Commission in entering another temporary order schedules prescribing unreasonable and confiscatory rates were imposed upon said Complainant as will appear by reference to the said order and schedules filed as Exhibit A to said bill of complaint.

3. It is further denied that the action of the respondents in failing and refusing to enter a final order establishing a permanent reduction is arbitrary and unreasonable, and it is affirmatively averred that said order was entirely proper under the circumstances of the case and entirely within the plain spirit and intention of Section 310 of the Public Utility Law of Pennsylvania.

The voluminous and extensive record of the present rate proceeding would of necessity compel the Commission to make a more thorough study of the facts and figures there presented in determining the amount of a permanent rate reduction than is necessary for determination of the temporary rate reduction. The authorities are all in accord with the principle that it is not necessary for a utility commission to determine with the same particularity the facts upon which a temporary order is based as it must in arriving at a permanent order.

4. It is further denied that the supplemental report and [fol. 64] order of the Commission, Exhibit A of said bill of complaint, is arbitrary, unreasonable and unlawful and it is affirmatively averred that said order is lawful and reasonable in every respect and is in compliance with the majority opinion of the District Court of the United States for the Middle District of Pennsylvania, Equity Case No. 1289 June Term, 1937, reported in 5 U. S. L. Week, 160, which case involves the same controversy set forth herein and the same parties complainant and respondent.

Seventh. Paragraph seventh of said bill of complaint is answered as follows:

1. It is denied that Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto for the following reasons:

(a) That on July 27, 1937, the Public Utility Commission, respondents herein, issued a temporary order requiring the complainant herein to make a reduction of \$435,000 annual gross operating revenue, and that the complainant herein filed a bill of complaint (a copy of which is hereto attached and marked Exhibit I), to the said order in a Federal Statutory Court for the Middle District in Scranton, Pennsylvania, said court being composed of the Honorable J. Warren Davis, Circuit Judge, the Honorable Albert L. Watson, District Judge and the Honorable Albert W. Johnson, District Judge.

(b) The said bill of complaint Exhibit I of this answer involved identical parties complainant and identical parties respondents as are complainant and respondents in the instant bill; that the said complaint was based upon the same facts and raised the same questions of law with respect to the constitutionality of Section 310 of Article III of the Pennsylvania Public Utility Law as were raised in paragraph seventh of the present bill of complaint. (Paragraph fifth of said Exhibit I.)

(c) That pursuant to said bill of complaint filed before the aforementioned Statutory Court, oral argument and briefs having been filed, the said Court on October 15, 1937, to No. 1289 June Term, 1937, In Equity, filed separate opinions replying to said matter. The opinion of J. Warren Davis, C. J., is attached hereto and marked Exhibit II; the opinion of Albert W. Johnson, D. J., is attached hereto and marked Exhibit III, and the opinion of Albert L. Watson, D. J., is attached hereto and marked Exhibit IV.

(d) That the majority opinions in the case before the United States District Court for the Middle District of Pennsylvania to No. 1289 June Term, 1937, clearly indicate that the Court there held Section 310 of Article III of the Pennsylvania Public Utility Law to be in compliance with the Constitution of the United States of America and the Fourteenth Amendment thereto. (See also 86 U. of P. Law Review, 314)

(e) That in view of the aforementioned ruling of the United States District Court for the Middle District of Pennsylvania, Equity Case No. 1289 June Term 1937, involving the same parties complainant and respondents as are complainant and respondents to the present bill of complaint and involving the same facts as are presented to the court in the present suit, said Statutory Court for the Middle District of Pennsylvania being a court of similar status as the present court, and the instant case not being here by an appeal or by reference hereto from the said Statutory Court for the Middle District of Pennsylvania, the present court is without jurisdiction to determine the [fol. 65] question of constitutionality of Section 310 of Article III of the Pennsylvania Public Utility Law for the reason that said question is res adjudicata.

2. It is further alleged that the attempt on the part of the complainant in this bill of complaint to ignore the decision of the United States District Court for the Middle District of Pennsylvania and again raise the question of the constitutionality of Section 310 of Article III is unjustifiable, unreasonable and inequitable and demonstrates a total disregard and lack of respect for the authority of the United States District Court for the Middle District of Pennsylvania, and bespeaks a misuse of the proper functions of a court of justice.

Eighth. Paragraph eighth of the said bill of complaint is denied as follows:

1. It is averred that the present court is without jurisdiction to interpret the validity of Section 310, Article III of the Public Utility Laws with respect to the Pennsylvania State Constitution and that complainant has an adequate remedy at law in the courts of the Commonwealth of Pennsylvania to determine such question.

Ninth. Paragraph ninth of said bill of complaint is answered as follows:

1. It is denied that said order Exhibit A of said bill of complaint violates the right guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto for the reasons set forth in paragraph seventh of this answer, and it is averred that said order Exhibit A, of said bill of complaint clearly

contains all the necessary facts to show that said order is based upon substantial evidence, in the large part complainant's own testimony and valuations, to render a valid and proper order of reduction in annual gross operating revenue as set forth therein.

2. It is further averred that paragraph ninth of said bill of complaint is purely argumentative and does not show grounds for relief by this court.

Tenth. Paragraph tenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Eleventh. Paragraph eleventh of said bill of complaint is answered as follows:

1. It is denied that said order Exhibit A violates the right guaranteed to complainants under the Constitution of the United States of America and the Fourteenth Amendment thereto, and deprives complainant of its property without due process of law and without just compensation therefor for the following reasons:

(1) It is denied that the determination by the Commission of the basis for the prescription of temporary rates is arbitrary, confiscatory and unreasonable and it is hereby averred that the amount of \$5,250,000 so determined is fair, reasonable and supported by the testimony of both the Commission and the complainant in hearings before the said Commission as appears from the report and order Exhibit A to said bill of complaint.

(2) It is denied that the method pursued by the Commission in making its determination of the basis for the prescribing of temporary rates to be charged by the complainant was erroneous, illegal and arbitrary, and on the contrary it is averred that the report and order Exhibit A of said Bill of Complaint is wholly in compliance with the ruling of the majority of the court in the United States District Court for the Middle District of Pennsylvania; to No. 1289 June Term, 1937.

(3) It is denied that the rate of return allowed by the Commission is inadequate and confiscatory and on the con-



trary it is averred that the report and order Exhibit A to said bill of complaint clearly indicates that the rate of return allowed will yield to the complainant a fair return upon the fair value of its property devoted to the rendition of its public service. The complainant is also protected from confiscation by the provision of Section 310, Article III of the Public Utility Law, which provides for recoupment against any possible loss sustained by it.

(4) Subsection (4) of paragraph eleventh is denied for the reasons set forth in subsection (3) of paragraph eleventh of this answer.

(5) Subsection (5) of paragraph eleventh is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

(6) Subsection (6) of paragraph eleventh is denied for the same reasons as those set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, constituting the Pennsylvania Utility Commission.

Twelfth. Paragraph twelfth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Thirteenth. Paragraph thirteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Fourteenth. Paragraph fourteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Fifteenth. Paragraph fifteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Sixteenth. Paragraph sixteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Seventeenth. Paragraph seventeenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard [fol. 67] J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Eighteenth. Paragraph eighteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Nineteenth. Paragraph nineteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Wherefore, your intervenors showing that the allegations of the bill of complaint herein are argumentative and erroneous, and fail to present an adequate or proper basis for the relief prayed for, and showing that the questions of constitutionality of the Pennsylvania Public Utility Law are res adjudicata, having been determined by the Statutory Court for the Middle District of Pennsylvania, and that the report and order complained of have been issued by the respondents in compliance with said Statutory Court for the Middle District of Pennsylvania, and that the bill of complaint should therefore be dismissed, pray that the

prayer of the bill asking a temporary injunction and the prayer of the bill asking a permanent injunction be severally and collectively refused.

And the intervenors will ever pray, etc.

Dated January 14, 1938.

Utility Consumers League, by Willis E. Ramsay, President, by Herbert B. Cohen, Attorney for Intervenors, 124 E. Market Street, York, Penna. Clarence M. Lawyer, Jr., 124 E. Market Street, York, Penna., of Counsel.

[fol. 68] *Duly sworn to by Willis E. Ramsay. Jurat omitted in printing.*

[fol. 69]

# EXHIBIT I TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

1289

EDISON LIGHT & POWER COMPANY, a Corporation Complainant,

against

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard, and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

## BILL OF COMPLAINT

Edison Light & Power Company, the above named complainant, by Walter Biddle Saul, its attorney, for its bill of complaint against the respondents, respectfully shows to the Court and alleges:

First. That the complainant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business in the City and County of York within the jurisdiction of the United States District Court for the Middle District of Pennsylvania; that the complainant is and for many years has been a public utility company engaged in the business of generating, transmitting, distributing and

selling electric energy to the residents of said City and County of York and environs, pursuant in all respects to the laws of the Commonwealth of Pennsylvania.

Second. That the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald Livingston are and at all times herein complained of were the persons constituting the Pennsylvania Public Utility Commission, an administrative body created by an Act of Assembly of said Commonwealth. That the respondents are sued herein individually in their respective own rights, and as the persons constituting said Pennsylvania Public Utility Commission, and are hereinafter sometimes collectively referred to, both in their respective individual capacities and in their official capacities as members of said Pennsylvania Public Utility Commission, as the "Commission." That the powers and duties of the Commission with respect to the regulation of public utilities are prescribed and limited by an Act of the Assembly of the Commonwealth of Pennsylvania known as the "Public Utility Law," adopted on or about May 28, 1937.

Third. That complainant is informed and believes and therefore alleges and avers that all of the respondents reside in the Commonwealth of Pennsylvania; that the principal official office of the respondents and of the Commission is in the City of Harrisburg within the jurisdiction of the United States District Court for the Middle District of [fol. 70] Pennsylvania; and that the order of the Commission herein complained of was promulgated at said principal office.

Fourth. That this is a civil suit in equity. That the matters in controversy and the questions herein involved arise under the Constitution and laws of the United States of America, and the amount in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. That this bill of complaint is filed and this suit prosecuted to enjoin and restrain the enforcement of an order of the Commission dated July 27, 1937, and served upon the complainant on or about July 28, 1937 (a true and correct copy of which is annexed hereto, made a part hereof and marked Exhibit "A"), imposing upon the complainant a reduction in annual gross operating revenue of approximately \$435,000, as specified therein.

Fifth. That said order, Exhibit A, purports to be made pursuant to the provisions of Section 310 of Article III of said Public Utility Law. That said Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, in that :

(1) It purports to empower the Commission to fix, determine and prescribe so-called temporary rates to be charged by public utilities under the jurisdiction of the Commission, which rates will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service, and thereby to deprive the complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(2) It purports to empower the Commission to fix, determine and prescribe such so-called temporary rates by alternative methods and upon alternative bases, pursuant to one of which (subparagraph (a)) such rates may provide a return as low as 5% upon the original cost less accrued depreciation of the physical property of such public utilities used and useful in the public service, whereas pursuant to the second such method or basis (sub-paragraph (b)) such rates shall provide a return of not less than an amount equal to the operating income (as adjusted by the Commission) of such public utilities for the calendar year 1935 or some subsequent year, regardless of whether such adjusted operating income is greater or less than 5% of such original cost less accrued depreciation; that it therefore purports to empower the Commission to fix, determine and prescribe so-called temporary rates which will discriminate unfairly between such public utilities, and thereby to deny to the complainant and all other such public utilities the equal protection of the laws.

(3) Sub-paragraph (c) of said Section 310 purports to empower the Commission to fix, determine, prescribe and change such so-called temporary rates every month or at any other interval and thereby to deny to the complainant and all other such public utilities the right to a fixed return and to prevent the complainant and all other such public utilities from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner; that said



sub-paragraph (c) fails to provide for notice to such public [fol. 71] utilities of any such determination, prescription or change of such so-called temporary rates or an opportunity to be heard with respect thereto and thereby permits the Commission to deprive the complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(4) Sub-paragraph (d) of said Section 310 purports to empower the Commission to prescribe such so-called temporary rates for a trial period without giving to such public utilities any notice thereof or an opportunity to be heard with respect thereto, and thereby to deprive the complainant and all other such public utilities of their property without due process of law.

(5) Sub-paragraph (e) of said Section 310 does not and cannot provide adequate and complete compensation or reimbursement for or restore the loss occasioned by the confiscation of the property of the complainant and all other such public utilities or for the deprivation of the property of the complainant and all other such public utilities without due process of law, all as hereinabove set forth.

Sixth. That said Section 310 is in violation of the Constitution of the Commonwealth of Pennsylvania in that sub-paragraphs (b), (c) and (d) thereof constitute an unlawful delegation of legislative power in contravention of Section One of Article II thereof.

Seventh. That said order, Exhibit A, by its express provisions superseded, rescinded and was entered in lieu of an order of said Commission dated July 13, 1937, and served upon the complainant on or about July 21, 1937 (a true and correct copy of which is annexed hereto, made a part hereof and marked Exhibit B); that said order, Exhibit A, is in violation of the provisions of Section 1005 of Article X of the aforementioned Public Utility Law, in that the same contains no recital therein of the findings of the Commission in sufficient detail to permit of a judicial review of the controverted questions presented in the proceedings in which said order was entered.

Eighth. That said order, Exhibit A, violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amend-

ment thereto and deprives the complainant of its property without due process of law in that said order contains no findings by the Commission and is not based upon any determination by it of (1) the fair value of the property devoted by the complainant to the rendition of its public service or (2) a fair rate of return to be applied thereto or (3) the return to which the complainant is lawfully entitled, and that said order is not supported by any substantial evidence before the Commission.

Ninth. That said order, Exhibit A, further violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just compensation therefor, in that a fair return on the fair value of the property devoted to the rendition of the public service of complainant is an amount far greater than that remaining to the complainant after effecting the reduction in its annual gross operating revenues provided in said order.

[fol. 72] Tenth. That, if said order, Exhibit A, is based upon any findings of fact or any determinations by the Commission, said order is based upon the findings of fact and determinations set forth in said order, Exhibit B. That said order, Exhibit A, if so construed, violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just compensation therefor and deprives the complainant of the equal protection of the laws, in that:

(1) The determination by the Commission of the basis for the prescription of temporary rates for the complainant is arbitrary, confiscatory and unreasonable, and the amount of \$5,250,000 so determined is far less than the fair value of the property of the complainant used and useful in the public service.

(2) The method pursued by the Commission in making its determination of the basis for the prescription of temporary rates to be charged by the complainant was erroneous, illegal, arbitrary and wholly unsupported by any substantial evidence.

(3) The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of the public service of the complainant.

(4) The return allowed the complainant in fixing its annual net operating income allowable thereunder is less than a fair return upon the fair value of the property of the complainant used and useful in the public service, and said return is confiscatory of the complainant's said property and deprives the complainant of its property without just compensation therefor and without due process of law.

(5) The Commission, in making its determination of the rate base of the complainant and the allowable return upon the same:

(a) erroneously and illegally failed and refused to (i) include in such rate base certain property not owned by the complainant but devoted to the rendition of its public service, or (ii) make any allowance in the operating expenses of the complainant to provide a reasonable charge for the use of such property, and

(b) erroneously and illegally failed and refused to include in the operating expenses of the complainant any allowance for the cost of services rendered by certain officers and employees of the complainant to certain of its affiliates and which services are in part now paid for by said affiliates of the complainant.

(6) The Commission erroneously and illegally failed and refused to allow the sum of \$88,710 in the operating expenses of the complainant, representing certain expenses necessarily incurred and paid by the complainant in connection with the preparation and presentation before the Commission of testimony and evidence necessary to be heard by the Commission in a proceeding instituted by the Commission upon its own motion challenging the reasonableness of the rates charged by the complainant.

[fol. 73] (7) The Commission erroneously and illegally failed and refused to allow proper sums in the operating expenses of the complainant by reducing the allowance of

the complainant for its annual tax liability from \$332,397 to \$180,000, whereas a proper recalculation of tax liability on the basis of the reduced allowable operating revenue, as determined by the Commission, would produce a resulting annual liability for taxes in the amount of approximately \$218,000, exclusive of any allowance for federal undistributed profits taxes.

(8) The Commission erroneously and illegally failed and refused to make any allowances in the operating expenses of the complainant for its proportionate part of the cost of regulation and in addition thereto for such sum as may be chargeable to the complainant for the expenses of the Commission incurred in the prosecution of its investigation of the rates of the complainant, as provided by clauses (a) and (b) of Section 1201 of Article XII of said Public Utility Law.

Eleventh. That in said order, Exhibit A, if the same be deemed and construed to include the findings of fact set forth in the previous order, Exhibit B, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000; that said sum is far less than the fair value of the property of the complainant used and useful in the public service, as will appear from the following:

(1) The reproduction cost new of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is in excess of \$6,000,000.

(2) The reproduction cost new less accrued depreciation of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is approximately \$5,350,000.

(3) The original cost of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is in excess of \$5,000,000.

(4) A fair and reasonable allowance to the complainant for working capital is not less than \$150,000.

(5) A fair and reasonable allowance to the complainant for going concern value is not less than \$400,000.

(6) The complainant is informed and believes and therefore alleges and avers that the Commission erroneously and illegally failed and refused to include in its determination of said rate base any allowance for certain generating and converting facilities of the complainant, the value of which is in excess of \$550,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for certain converting facilities and properties, the value of which is in excess of \$80,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for the distribution lines of the complainant built in whole [fol. 74] or in part by funds contributed by its consumers, the value of which is approximately \$200,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for going concern value, a fair allowance for which is in excess of \$400,000.

(7) The said determination by the Commission of said rate base in the amount of \$5,250,000 is arbitrary, illegal, erroneous and wholly unsupported by any substantial evidence.

Twelfth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of the complainant to an amount whereby its annual net operating income would be far less than the fair return to which the complainant is lawfully entitled for the following reasons:

The complainant and two of its affiliated corporations (York Steam Heating Company and York Bus Company) are commonly and wholly owned by York Railways Company and each of said four companies is engaged in business as a public utility in the City of York, Pennsylvania and environs; York Railways Company has presently outstanding certain First Mortgage Thirty Year Five Per Cent Gold Bonds in an aggregate principal amount of approxi-



mately \$5,770,000, which mature on December 1, 1937, and are secured by a direct lien upon the physical properties and assets of said York Railways Company and the further pledge of all of the common stocks of the complainant, York Steam Heating Company and York Bus Company, as well as certain evidences of indebtedness of the complainant in the aggregate principal amount of approximately \$1,100,000; by virtue of the affiliation as aforesaid the complainant and its consumers enjoy and derive substantial benefits in the way of (i) profits resulting from the sale of electric energy and steam by the complainant to said York Railways Company and York Steam Heating Company, respectively, (ii) certain economies in operations resulting from the payment by certain of the complainant's affiliates to the complainant of a portion of the salaries of its administrative officers and employees, (iii) the use by the complainant, without cost to it, of certain transmission lines, poles, land, buildings, etc., of said York Railways Company representing an approximate investment to it of \$168,000, and (iv) certain intangible and other benefits and advantages resulting therefrom; the said benefits and advantages result in aggregate annual savings in operating expenses and additional profits in excess of \$130,000; the aggregate fair value of the property of the complainant and its said affiliates devoted to the rendition of their respective public services is substantially in excess of \$8,500,000; the consolidated gross operating revenue of said corporations for the twelve months ended June 30, 1937 was approximately \$2,706,000 and the consolidated gross operating expenses for said period was approximately \$1,490,000; the consolidated net operating revenue for said period was approximately \$1,216,000 and the consolidated net operating income for said period (after deducting reasonable allowances for retirement expense and taxes) amounted to approximately \$483,000; the total interest due and payable upon the aforementioned outstanding bonds of said York [fol. 75] Railways Company for the said period amounted to approximately \$304,600, the interest accrued upon consumers deposits of the complainant for said period amounted to approximately \$4,000, and the total of said interest charges of the complainant and its affiliates for said period amounted to approximately \$308,600; the consolidated net operating income, less the aforementioned

consolidated fixed interest charges of the complainant and its affiliates for said period, but excluding any allowance for debt discount and expense of approximately \$36,900, amounted to approximately \$174,400; the minimum net operating income required to be earned by the complainant itself in order to produce a consolidated income of complainant and its said affiliates equal to their consolidated fixed interest charges amounted to approximately \$448,600; applying the reduction of \$435,000 prescribed by said order Exhibit A, the consolidated net operating income of the complainant and its said affiliates for the twelve months ended June 30, 1937, would be approximately \$120,200 less than the amount of the aforementioned fixed interest charges of the complainant and its said affiliates for said period, and would have resulted in a consolidated net deficit for the complainant and its said affiliates for said period of approximately \$131,700. The complainant is informed and believes and therefore alleges and avers that the continued operation of the businesses of the complainant and its said affiliates on the basis of the results of their operations for the twelve months ended June 30, 1937, as adjusted to reflect the reduction of \$435,000 prescribed by said order, Exhibit A, would result in the eventual separation of the complainant and its aforementioned affiliates and that thereby the complainant and its consumers would or might be deprived of the benefits resulting from the aforementioned sales of electric energy and steam, and would likewise suffer an increase in capital expenditures or operating expenses due to the necessity of either leasing the aforementioned or similar physical properties and facilities now owned by York Railways Company but used by the complainant without cost to it or constructing similar physical properties and facilities, and in addition thereto would be required to incur and pay additional expenses for salaries to its officers and employees, as well as other additional expenses and suffer loss of profits resulting from the loss of additional intangible and other benefits of the affiliation of complainant and its said affiliates, all as hereinabove set forth. In spite of the fact that the complainant, in the proceeding in which said order, Exhibit A, was promulgated, duly offered testimony and other evidence and duly proffered proof of the facts hereinabove set forth (other than the facts regarding said order, Exhibit A, and

its effects), nevertheless the Commission erroneously and illegally excluded said testimony and evidence from the record of said proceeding and refused to permit the complainant to submit said proof.

Thirteenth. That in said order, Exhibit A, if the same be deemed and construed to include the findings of fact set forth in the previous order, Exhibit B, the Commission, in determining the allowable net operating income of the com-[fol. 76] plainant, erroneously and illegally failed and refused to make proper allowances for certain operating expenses and the loss of certain revenues of the complainant necessarily incurred or to be incurred by it in the ordinary conduct of its business, as follows:

(1) The complainant has for several years past enjoyed and now enjoys, without cost to it, the use of certain transmission lines, poles, land, buildings, etc., owned by York Railways Company representing an approximate investment to it of \$168,000; said properties are used by the complainant in connection with the transmission, distribution and sale of electric energy to its consumers; the fair and reasonable rental value of said property is approximately \$18,800 per annum. In the event complainant is denied the right to earn a return which, together with the return of its aforementioned affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a result thereof the complainant is separated from its said affiliates, the complainant will be deprived of the aforementioned free use of such properties and put to the additional expense of constructing duplicate properties or of leasing the aforementioned properties for said approximate sum of \$18,800 per annum, for which no allowance was made by the Commission.

(2) For several years past and at the present time, the complainant and certain of its affiliates have included and include among their operating personnel various officers and employees whose services and time are allocated among the complainant and such affiliates, with a proportionate distribution of their respective salaries and expenses. In the event complainant is denied the right to earn a return which, together with the return of such affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a

result thereof the complainant is separated from such affiliates, the complainant will be deprived of the contribution of the proportionate part of the aggregate expenses of said officers and employees now allocated to and paid by such affiliates and will thereafter be required to pay the entire present aggregate salaries and compensation of such officers and the majority of such employees, and the total additional cost to the complainant, in such event, will be approximately \$20,600 per annum, for which no allowance was made by the Commission.

(3) For several years past, the complainant has sold electric energy to the York Railways Company. In the event complainant is denied the right to earn a return which, together with the return of its aforementioned affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a result thereof the complainant is separated from its said affiliates, the complainant will be deprived of an annual profit of approximately \$15,000 resulting from the said sale of electric energy to York Railways Company, thereby reducing the net annual revenues of the complainant by said amount, for which no allowance was made by the Commission.

(4) In connection with the presentation of its case before [fol. 77] the Commission in the proceeding in which the aforementioned orders, Exhibits A and B, were promulgated, the complainant was required to employ engineers, auditors and attorneys and to incur other necessary expenses incidental to the presentation of such case. During the year ended December 31, 1936, such rate case expenses aggregated approximately \$38,710 and up to and including June 30, 1937, such rate case expense aggregated approximately \$101,000. The Commission failed and refused to include in complainant's operating expenses in determining its allowable net operating income any allowance for the aforementioned rate case expense. The complainant is lawfully entitled to include such rate case expense in its operating expenses. At the time of the promulgation of the aforementioned orders, Exhibits A and B, the Commission had before it a document entitled "Respondent's Exhibit No. 16" showing the estimated rate case expense of the complainant as at or about March 1, 1937, to be approximately \$86,000. The accuracy of said exhibit and the amount

therein stated was neither questioned nor refuted in said proceeding.

(5) The provisions of Section 1201 of Article XII of the aforementioned "Public Utility Law" provide for an assessment of expenses incident to the regulation of public utilities thereunder for the purpose of reimbursing the General Fund of the State Treasury for all expenses incurred by the Commission in connection with the administration and enforcement of said Public Utility Law and for such expenses as may be incurred by the Commission in a particular rate proceeding or investigation such as the one in which the aforementioned orders, Exhibits A and B, were promulgated. Such assessment should have been made pursuant to the aforementioned provisions of said law and the sum resulting therefrom allowed in the operating expenses of the complainant. The Commission erroneously and illegally failed and refused to make any allowance in the operating expenses of the complainant on account thereof.

Fourteenth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of the complainant to an amount whereby its annual net operating income would be far less than that to which it is entitled under the provisions of Section 310 of the aforementioned Public Utility Law in that, pursuant to subparagraph (b) thereof temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935 or such other subsequent year as the Commission may deem proper; that complainant does not have such continuing property records and is, therefore, lawfully entitled under said Section 310 to a return of not less than an amount equal to its operating income for the calendar years 1935 or 1936; that the application of said order, Exhibit A, would reduce the operating income of the complainant to an amount far less than the return to which the complainant is lawfully entitled as aforesaid.

Fifteenth. That by reason of the foregoing facts, said [fol. 78] order, Exhibit A, is unreasonable, arbitrary and confiscatory and deprives the complainant of a fair return upon the fair and reasonable value of the property devoted by complainant to the rendition of its public service, in



violation of the Constitution of the United States and the Fourteenth Amendment thereto.

Sixteenth. That the provisions of Section 310 (e) of Article III of said Public Utility Law do not and cannot provide adequate and complete compensation or reimbursement for the confiscation of the property of the complainant as hereinabove alleged, and do not and cannot prevent said order, Exhibit A, from depriving the complainant of its property without just compensation therefor and without due process of law, in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto.

Seventeenth. That the future compensation or reimbursement purportedly guaranteed by said Section 310 (e) will not and cannot restore to the complainant the aggregate loss suffered by it as a result of the confiscation of its property by the enforcement of said order, Exhibit A; and that the provisions of said Section 310 (e) with respect to the purported recoupment of losses resulting from the difference between temporary and final rates are wholly inadequate and illusory.

Eighteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be deprived of its rights and privileges guaranteed by the Constitution of the United States of America and the Fourteenth Amendment thereto, and will be forced to surrender its constitutional rights and will suffer irreparable injury and damage.

Nineteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be obliged to comply with the terms and provisions of said order through fear of the severe penalties imposed upon it for non-compliance therewith under the provisions of Sections 1301 and 1302 of Article XIII of the aforementioned Public Utility Law, to wit: the payment of a fine of \$50 for each and every day during which said order is not complied with; that such forced compliance with said order, Exhibit A, will result in the confiscation of the property of the complainant, the deprivation of its property without due process of law and without just compensation therefor, and the denial to the complainant of the equal protection of the laws.

Twentieth. That the complainant does not have a plain, speedy and efficient remedy either at law or in equity in the courts of the Commonwealth of Pennsylvania, in that the complainant by virtue of the provisions of Sections 1103 and 1111 is deprived of any right to obtain a supersedeas of said order, Exhibit A, on appeal therefrom, or an injunction or restraining order for the purpose of preventing the enforcement of said order, Exhibit A, and the resultant confiscation of complainant's property as hereinabove alleged.

Twenty-first. That the complainant has neither a full, complete, nor adequate remedy at law.

Wherefore, complainant prays:

(a) That a writ of subpoena issue directed to the respondents, commanding them and each of them to appear and answer fully to this bill of complaint, but not under oath, answer under oath being expressly waived.

(b) That the respondents, and each of them, individually in their own respective rights and in their official capacities as members of the Pennsylvania Public Utility Commission and their respective successors in office, and all of those acting or claiming to act under their authority or in aid or assistance of them, be enjoined and restrained from in any manner enforcing or attempting to enforce the order of said Commission, Exhibit A; and from instituting or threatening to institute against the complainant or any of its officers, directors, servants, agents or employees, any civil or criminal proceedings in any manner or form before any judge or court of any jurisdiction, based upon any claimed violation by the complainant of or non-compliance with said order, Exhibit A; and from imposing or attempting to impose upon the complainant or any of its officers, directors, servants, agents, or employees, any penalty for the complainant's claimed non-compliance with or violation of said order, Exhibit A.

(c) That pending the determination of this suit a temporary injunction be granted forbidding, restraining and enjoining all of the actions on the part of the respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(d) That pending the hearing and determination of an application for a temporary injunction as prayed for in

paragraph (c) hereof, to be returnable upon order to show cause herein, this Honorable Court grant a temporary restraining order forbidding, restraining and enjoining all of the actions on the part of the respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(e) That it be adjudged that the order of said Commission, Exhibit A, is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, and is void and of no force and effect.

(f) That it be adjudged that Section 310 of Article III of said Public Utility Law is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment hereto, and is void and of no force and effect.

(g) That the complainant have such other and further relief as may be just and proper and equitable in the premises.

And complainant will ever pray, etc.

Dated, July 31, 1937.

Edison Light & Power Company, by J. E. Wayne,  
President, by Walter Biddle Saul, Attorney for  
Complainant, Office and Post Office Address: Pack-  
ard Building, Philadelphia, Penna. Clarence W.  
Miles, Baltimore Trust Building, Baltimore, Md.,  
of Counsel.

[fol. 80] *Duly sworn to by J. E. Wayne. Jurat omitted in printing.*

[fol. 81] EXHIBIT "A" TO COMPLAINT (Exhibit 1)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

INTERIM REPORT AND ORDER

By the COMMISSION:

By interim report and order of July 13, 1937, in this proceeding, the Commission directed Edison Light and Power

Company, respondent, to file a tariff supplement effecting a temporary reduction of approximately \$435,000 in its annual gross operating revenue by the application of a Commission Adjustment Multiplier to all net monthly bills rendered to consumers billed under certain tariff schedules.

On July 15, 1937, the Superior Court filed its opinion in *Pennsylvania Power and Light Company v. Public Service Commission, et al.*, — Atl. —, — Pa. Superior Ct. —. In the course of this opinion the court, speaking through Judge Parker, stated, that although in many cases appeals had been disposed of without a determination of a precise tariff, the Commission should, under the circumstances, determine "what, in its opinion, are fair charges or proper tariffs." The Court remanded the record to the Commission, directing *inter alia*, "that a proper schedule of rates be fixed."

We have examined our interim report and order of July 13, 1937, in the light of the cited court opinion. Since adoption of our report and order of July 13, 1937, we have also obtained from the Edison Light and Power Company consumer data which may be used in the construction of a tariff. It is our opinion that the effect of the cited decision is to require us, whenever possible, to construct a tariff and order its adoption by the company when we find existing rates to be unreasonable.

The Commission is of opinion that the consumers are entitled to an immediate reduction. However, we are bound by the holding of the Superior Court in *Chambersburg Gas Company v. Public Service Commission*, 120 Pa. Superior Ct. 206, 217, that a utility cannot be required to file tariffs covering past service periods. Although this decision interpreted the terms of The Public Service Company Law, the corresponding provisions of the Public Utility Law relative to tariffs are almost identical in wording and would undoubtedly receive the same construction. Therefore, the reductions herein ordered will appear on bills covering service rendered after the effective date of the tariff filed pursuant hereto.

From a review of the record and the consumption data [fol. 82] obtained from the respondent, we find that the following tariff is reasonable and proper for the purpose of temporary rates. In our interim report and order of July 13, 1937, we pointed out that modification thereof would largely depend upon revenues and consumer classifications. Consumer data and experience with the follow-

ing schedules may indicate that further adjustments are proper.

We find that the following schedule of temporary net rates is proper and reasonable, and should be made effective by Edison Light and Power Company, respondent:

**Domestic Service:** (This schedule should be made available to domestic consumers now served under schedules RL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50c
Next 19 Kwh. per month 4c per Kwh.	
Next 30 Kwh. per month 3½c per Kwh.	
Next 60 Kwh. per month 3c per Kwh.	
Next 80 Kwh. per month 2½c per Kwh.	
Over 200 Kwh. per month 1½c per Kwh.	

**Commercial Service:** (This schedule should be made available to commercial consumers now served under schedules GL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50c
Next 89 Kwh. per month 4c per Kwh.	
Next 200 Kwh. per month 3c per Kwh.	
Next 700 Kwh. per month 2½c per Kwh.	
Next 1000 Kwh. per month 2c per Kwh.	
Over 2000 Kwh. per month 1½c per Kwh.	

The following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, should be cancelled: RL; A; B; GL; and HC. The other schedules of Tariff Pa. P. U. C. No. 8 should remain effective, except as hereinafter ordered modified.

The Company should also apply a Commission Adjustment Multiplier of 0.70 to all net monthly bills covering energy, and all related billed items including connected load, demand, power factor and service charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing tariff schedules, which shall be included in the tariff filed pursuant to this order: Tariff Schedule P-1; TS; SL; M; and MCY. Due to the failure of the Company to supply consumer data for those



schedules, the Commission must, in the public interest, adopt the Commission Adjustment Multiplier as above set forth in order to arrive at an equitable reduction; therefore,

Now, to wit, July 27, 1937, it is ordered: That the interim report and order of July 13, 1937, imposing temporary rates in this proceeding, be and is hereby rescinded.

[fol. 83] It is further ordered: That Edison Light and Power Company, respondent, shall within ten (10) days of date of service of this order file a tariff supplement, effective upon one (1) day's notice to the public and this Commission, effecting a reduction of approximately \$435,000 in its annual gross operating revenues, by the establishment of the following rates or rate adjustments:

**Domestic Service:** (This schedule shall be made available to domestic consumers now served under schedules RL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50¢
Next 19 Kwh. per month	4¢ per Kwh.
Next 30 Kwh. per month	3½¢ per Kwh.
Next 60 Kwh. per month	3¢ per Kwh.
Next 80 Kwh. per month	2¢ per Kwh.
Over 200 Kwh. per month	1½¢ per Kwh.

**Commercial Service:** (This schedule shall be made available to commercial consumers now served under schedules GL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50¢
Next 89 Kwh. per month	4¢ per Kwh.
Next 200 Kwh. per month	3¢ per Kwh.
Next 700 Kwh. per month	2½¢ per Kwh.
Next 1000 Kwh. per month	2¢ per Kwh.
Over 2000 Kwh. per month	1½¢ per Kwh.

It is further ordered: That the following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, shall be cancelled: RL; A; B; GL; and HC.

It is further ordered: That respondent company shall apply a Commission Adjustment Multiplier of 0.70 to all net monthly bills covering energy, and all related billed items including connected load, demand, power factor and service

charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing tariff schedules, which schedules shall be included in the tariff filed pursuant to this order: Tariff Schedules P-1; TS; SL; M; and MCY.

It is further ordered: That the following schedules of Tariff Pa. P. U. C. No. 8, not hereinabove ordered cancelled or modified, shall remain effective: PR: P-2; P-4, P-5; CBH; AS; OPH; BLI.

Pennsylvania Public Utility Commission, (Signed)  
Thomas C. Buchanan, Acting Chairman.

Attest: (S.) Joseph P. Sheridan, Secretary.

[fol. 84] EXHIBIT "B" TO COMPLAINT (Exhibit 1)

### Final Writing

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

INTERIM REPORT AND ORDER IMPOSING TEMPORARY RATES

By the COMMISSION:

This proceeding is an inquiry and investigation instituted on the motion of the Commission to determine the reasonableness of the rates of respondent, Edison Light and Power Company. Several hearings have been held in the proceeding, some prior to June 1, 1937, the effective date of the Public Utility Law, and others subsequent to that date.

Section 310, Article III of the Public Utility Law provides generally that the Commission may, in any proceeding involving the rates of a public utility, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public

utility, pending the final determination of such rate proceeding. At the hearing held June 9, 1937, in this proceeding, Commissioner Beamish notified the respondent company of his intention to report to the Commission that, in his opinion, the appropriate time had arrived for the Commission to consider the imposition of temporary rates. Subsequently, the respondent was given formal notice that temporary rates might be imposed, and was ordered to appear on June 23, 1937, to present such evidence in connection with temporary rates as might seem proper. Hearing was held on June 23, 1937, pursuant to the order, and the company had stated of record that it has no desire to present further evidence relating to temporary rates.

Some time will necessarily elapse before final argument in this proceeding and final determination of the reasonableness of the rates of respondent company. It is therefore the opinion of the Commission, from a study of the record evidence, that the public interest requires that temporary rates be immediately fixed, determined and prescribed, pending the final determination of the instant rate proceeding, and that a proper basis for the prescription of such temporary rates is the sum of \$5,250,000.

For the purpose of determining temporary rates, the Commission will apply a rate of 6% and will allow \$315,000 for return.

The operation and maintenance expense of the respondent company for the year ended December 31, 1936, as re-[fol. 85] ported to the Commission, amounted to \$919,110. An item of \$38,710 charged by the company to Regulatory Expenses should be deducted from the reported expense figure. This item consists largely of rate case expenses incurred in the instant proceeding, and we do not believe that the ratepayers of the respondent company should be required to bear these expenses, since, in our opinion, the rates charged by the company are unreasonable and excessive. The respondent utility itself admits that some reduction in rate would be necessary, even on the basis used by it in the presentation of its evidence.

For the purpose of temporary rates, we will allow an annual depreciation charge of \$120,400, the precise amount reported by the company as charged on its books for the year ended December 31, 1936.

In its annual report for the year ended December 31, 1936, the respondent utility records tax payments in the amount of

\$332,500. We will reduce this item to a rounded figure of \$180,000 since a recalculation of tax payments on the basis of the reduced allowable revenue gives a resultant figure of approximately \$180,000.

The actual gross revenues of respondent, as reported to the Commission for the year ended December 31, 1936, were \$2,020,000. The sum of the allowances above made for return, operating expenses, depreciation and taxes is \$1,495,800. The arithmetical difference between the allowable and actual gross revenues is \$524,200. The consumers of respondent are therefore entitled to a substantial reduction.

For the year ended December 31, 1936, the company reported gross revenues of \$2,020,044, received in return for 64,255,466 kilowatt hours, showing an average rate of 3.14¢ per kilowatt-hour. The Commission has analyzed each classification of consumers under the respondent company's present tariff, and has found that the average rate per kilowatt-hour in certain classifications exceeds the over-all average of 3.14¢. We are, therefore, of the opinion that the reduction should accrue to those classes of consumers who are now paying higher than the general average rate of energy. To this end, we will order the application of a Commission Adjustment Multiplier of 0.70, which is a decimal fraction expressing the arithmetical correction necessary to convert the 1936 gross revenue of \$1,451,383, derived from the schedules to be corrected, to a lower figure of \$1,016,393, resulting in an annual reduction of \$435,000. The Company will apply the said Commission Adjustment Multiplier of 0.70 to the net monthly bills of all consumers billed under tariff schedules which produced an average revenue per kilowatt-hour in excess of 3.14¢ during the year ended December 31, 1936, thus accomplishing a reduction of 30% in the bills of the consumers affected.

This reduction is, of course, subject to increase or decrease as circumstances may indicate. We are not to be understood as expressing an opinion concerning permanent or final rates, nor as promulgating a standard which is not subject to modification either because of the provisions of the tariff which the company must file within 60 days after June 1, 1937, to comply with Commission Temporary Regulation No. 2, or other factors or principles which may command our attention. Under the provisions of Section 310 (c) of the Public Utility Law, the Commission may

fix, determine and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and exercise of the power there conferred may result from any substantial change in condition which comes to the attention of the Commission. The amount and character of such possible modification will, to a large extent, depend upon revenues and consumer classifications, and we will therefore order respondent to submit supporting consumer and revenue data with any tariff filed in purported compliance with Commission Temporary Regulation No. 2; therefore,

Now, to wit, July 13, 1937, it is ordered: That Edison Light and Power Company, respondent, shall, within ten (10) days after service of this order, file a tariff supplement effective on one (1) day's notice to this Commission and the public, effecting a reduction of approximately \$435,000 in its annual gross operating revenue by the application of a Commission Adjustment Multiplier indicated on all bills of zero point seventy (0.70) to all net monthly bills covering energy and all related billed items, including connected load, demand, power factor and service charges, rendered after the date of this order to any consumer billed under the following tariff schedules:

Tariff P. U. C. Pa. No.	Tariff Schedule Code No. or letter	Consumer Classification
8	RL	Domestic Service.
8	A	City Lighting Service.
8	B	Suburban Lighting Service.
8	GL	General Lighting Service.
8	P-I	Retail Power.
8	HC	Heating & Cooking Service.
8	TS	Temporary Service.
8	SL	Series Tungsten Lamps.
8	M	Municipal St. Ltg.
8	MCY	Municipal St. Ltg. (City of York only).

It is further ordered: That, with any tariff filed in purported compliance with Commission Temporary Regulation No. 2, Edison Light and Power Company file supporting



consumer data to show the anticipated revenues under such tariff from each class of consumers.

Pennsylvania Public Utility Commission, (Signed)  
D. J. Driscoll, Chairman.

Attest: (Signed) Joseph P. Sheridan, Secretary.

[fol. 87]

EXHIBIT II TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

EDISON LIGHT & POWER COMPANY, a Corporation,  
Complainant,

v.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J.  
BEAMISH, Guy K. Bard, and Donald Livingston, Indi-  
vidually and as Constituting the Pennsylvania Public  
Utility Commission, Respondents

Before Davis, Circuit Judge, and Johnson and Watson,  
District Judges

DAVIS, Circuit Judge:

This action concerns the Lawfulness of a temporary rate for a public utility under authority of a state statute. The Edison Light & Power Company, a public utility corporation, is engaged in supplying electric energy in and about the City and County of York, Pennsylvania. The respondents are individuals, constituting the Pennsylvania Public Utility Commission, hereinafter referred to as the commission. The complainant brought this suit in a statutory court, pursuant to section 266 of the Judicial Code to enjoin the enforcement of an order of the commission dated July 27, 1937, requiring the complainant to adopt temporary rates for its electric service in accordance with the provisions of section 310 (a) and (e) of the Public Utility Law of Pennsylvania which went into effect June 1, 1937.

The order of July 27, 1937, is the commission's second order imposing these temporary rates upon the company. The first one was dated July 13, 1937, but on account of a decision on July 15, 1937, of the Superior Court of Pennsyl-

vania in the case of Pennsylvania Power & Light Company, v. Public Service Commission, 193 Atl. 427, that order was rescinded, is no longer in this case, and the one of July 27, 1937 was substituted.

The investigation to determine the reasonableness of the rates charged by the complainant was instituted on January 27, 1936 by the Pennsylvania Public Service Commission, predecessor of the respondent commission. Many hearings were held by it; nearly a thousand pages of testimony was taken and volumes of exhibits were admitted in evidence. The case was closed on June 23, 1937.

The first order of July 13, 1937 reduced the gross operating revenue of the complainant company \$435,000 a year. The second order of July 27, 1937 likewise reduced the annual gross operating revenue of the complainant by \$435,000.

The order of the commission was made pursuant to section 310 (a) and (e) of the Pennsylvania Act of June 1, 1937. These subsections provide as follows:

“Section 310. Temporary Rates.—(a) The commission [fol. 88] may in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding. Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service and if the duly verified reports of such public utility to the commission do not show such original cost less accrued depreciation of such property the commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinafter provided.”

“(e) Temporary rates so fixed, determined and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed under this section the commission shall consider the effect of such

rates in fixing, determining and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceedings. If upon final disposition of the issues involved in such proceedings the rates as finally determined are in excess of the rates prescribed in such temporary order then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

The complainant contends that these subsections violate the provisions of the Fourteenth Amendment to the Constitution of the United States.

But assuming these subsections to be constitutional, complainant says that the order made pursuant to them is unconstitutional in that it is confiscatory because it "fixes, determines and prescribes" rates which do not yield a fair return on the fair value of its property devoted to public use.

It should be stated at the outset that this court is not a rate-making body. The function of fixing the rates of a public utility ultimately rests with the Commonwealth. It has the right to control private corporations, whose business, necessarily monopolistic in character, is affected with a public interest. That control, where the fixing of rates is involved, is exercised through one of its agencies, the Public Utility Commission. In exercising this control, the rights of both the public and the corporation must be considered. The company is entitled to a fair return on a fair value of its property devoted to public use. It cannot be so high as [fol. 89] to exceed the value of the service to the consumer and cannot be so low as to confiscate the property devoted to that service. *Public Service Railway Co. vs. Board of Public Utility Commissioners*, 276 Fed. 979, 984. In other words the company is entitled to ask a fair return upon the value of that which it employs for the public convenience, and the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth. Neither is entitled to anything more. *Smyth v. Ames*, 169 U. S. 466, 547. *Philadelphia City Passenger*

**Railway Co. v. Public Service Commission (Pa.) 114 Atl. 642, 648.**

We are concerned here solely with the allowance or disallowance of a preliminary injunction, and the determination of that question depends upon whether or not the rates prescribed are confiscatory. Considered from one rate base they may be fair and reasonable and considered from another, they may not be. The complainant, being entitled to a fair return on the fair value of all its property used in the service of the public, the question arises as to what property constituted the "basis" to which the commission applied a temporary rate of 6 per centum.

Section 310 (a) of the Act provided as to temporary rates that:

"Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service."

It was the duty of the commission to make such findings or to furnish such facts as would inform the court on a review as to whether or not those who had been affected by its determination had been deprived of their legal or constitutional rights. In the case of *Pennsylvania Power & Light Co. v. Public Service Commission*, *supra*, the court said:

"This is but a recognition of a fundamental principle that where the legislature delegates power to an extra-judicial tribunal appointed to determine property values or rights and the tribunal acts in such matters, it must make such findings that on a review by the court it is possible to determine whether one affected by such determination has been deprived of legal rights."

In the case of *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U. S. 292, 300, the court laid down the law as follows:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record. . . ."

"Upon the strength of these unknown documents refunds have been ordered for sums amounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs to-day. This is not the fair hearing essential to due process. It is condemnation without trial."

"From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the commission took judicial notice and [fol. 90] on which it rests its conclusion. Not only are the facts unknown; there is no way to find them out.

"To put the problem more concretely; how was it possible for the appellate court to review the law and the facts and intelligently decide that the findings of the commission were supported by the evidence when the evidence, that it approved was unknown and unknowable?"

In the case of *United Railways v. West*, 280 U. S. 234, 250, the court said:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts."

The same court in the case of *Smyth v. Ames*, 169 U. S. 466, 546, many years ago stated some of the "relevant facts" which must be considered in fixing a rate:

"And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

To these elements should be added "going concern value." In *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 165, the court, in speaking of this value said:

"This element of value is a property right, and should be considered in determining the value of the property, upon



which the owner has a right to make a fair return when the same is privately owned although dedicated to public use. . . . Included in going value as usually reckoned is the investment necessary to organizing and establishing the business which is not embraced in the value of its actual physical property."

The Commission, however, took a rate base as set forth in paragraph 10 of its answer, of \$5,900,000 which represents an allowance of \$5,350,000 for reproduction cost new less accrued depreciation, plus \$150,000 for working capital and \$400,000 for going concern value. The operating revenue for 1936 was \$2,020,044. From this the commission deducted operating expenses of \$880,400, retirement expenses of \$120,422 and taxes of \$218,000, leaving a net profit of \$801,222. The commission then on July 2, 1937 prescribed a temporary rate of 6.20 per cent which will yield a return of \$366,222, and produce a reduction in the annual revenue of the complainant of about \$435,000.

But the commission failed to deduct from the gross annual revenue \$114,355 of other expenses, taxes, pay roll increases, pensions to employees, etc. which for the year 1936 would reduce the net return to \$213,067. This represents a rate of 3.61 per cent on the rate base of \$5,900,000 used by the commission, and for the year ended June 30, [fol. 91] 1937 a return of \$214,245, on a rate of 3.63 per cent. If other elements of capital value had been considered by the commission which under the rules laid down by the Supreme Court it must do in fixing a rate base, both the return and rate would accordingly have been less. Such rates are clearly confiscatory. A rate of 7 per cent. was allowed by The Pennsylvania Public Service Commission in 1936. The complainant produced substantial proof to show that a reasonable rate for it is at least 7½ per cent.

Does the fact that the rates fixed are only temporary save the order from the inhibition of the constitution? We think it does not and that this question is answered by the case of *Prendergast vs. New York Telephone Company*, 262 U. S. 43, 49, where the court said:

"Nor did the fact that the orders of the Commission merely prescribed temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the

new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process."

It has been argued that the recoupment provision of the Pennsylvania Act avoid the infirmity in the New York Act which the court pointed out in the *Prendergast* case. This argument in effect means that it is proper and legal to violate the constitution if at some future time that violation may be corrected wholly or in part. In other words, it is perfectly all right and permissible to take one's money by force if by and by it may be partly returned to him. If that is so, how long may the constitution be violated during which time the injured party is without remedy? May it be for a month, as provided in section 310 (c) or for a trial period of six months or a year as provided in section 310 (d) of the Act? Such interpretation of the constitutional requirement is unsound.

Further, the provision for recoupment is not entirely effective. It does not provide for interest on the money, which the company loses during the trial period, while the final rates are being fixed, and if it did so require, considerable portions of the principal lost might never be recovered. The Act provided that if the final rates are higher than the temporary rates, "then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined" the sum lost on account of the temporary rates. But if the consumer discontinues the service or moves out of the territory, as doubtless in a shifting population will be frequently done, the utility in many cases will be absolutely without remedy, for section 305 of the Act abolishes "deposits to secure future payments."

[fol. 92] The commission relies almost entirely upon the case of the *Bronx Gas & Electric Co. v. Maltbie*, 271 N. Y. 364; 3 N. E. 2nd Series, 512, to escape the rule laid down in the *Prendergast* case. In the *Bronx Gas* case the court said

that "the sole question for this court to determine is whether the Public Service Commission can legally provide a temporary rate for electric service, pending the determination of the final rate." Of course, it can if it considers those elements which the Supreme Court has always said are necessary in order to form a proper rate base and makes an order that is not confiscatory. The court further said that if this were done it would prevent the fixing of a temporary rate for it would be a final rate. This does not follow. The elements which the Supreme Court in numerous cases has said must be considered in fixing a fair rate, need not be considered with the same care, particularity and thoroughness with which they must be considered in fixing a final rate; but they must be considered to the extent that will enable the commission to avoid fixing a confiscatory, temporary rate, for neither the constitution or the Supreme Court has made any exception in fixing a confiscatory rate because the rate is temporary. In the Bronx Gas case, the New York court said that the Prendergast case decided several things, one of which was that, "the temporary rate must give a fair return upon *all those elements* of capital value which must be considered in fixing the final rate." That is exactly what we understand the case to have decided and that required the commission in the case at bar in fixing the temporary rate to consider the necessary elements of capital value other than original cost less accrued depreciation sufficiently to avoid fixing a confiscatory temporary rate. The decision in the Bronx case in effect differs with the law declared in the Prendergast case.

In the case of Laclede Gas Light Co. v. Missouri Public Service Co., 8 Fed. Supp. 806, the court said:

"It is earnestly urged by defendants and intervenor that the Commission's order should be permitted to go into effect because it is intended only to be temporary but, as we have pointed out, the order itself is not limited. Moreover, the constitutional prohibition against the taking of property without due process of law contains no exception permitting a taking of some property or a taking during a limited period of time."

Speaking for myself alone, it seems to me that subsections 310 (a) and (e) of the Act are unconstitutional because they permit the commission to fix and maintain rates as low as 5 per cent upon the original cost less accrued depreciation.

without considering other elements of capital value which the Supreme Court has often said must be done in fixing a fair rate on a fair value of property used and useful in the public service. The test of the constitutionality of an act is not what a rate-making body does under it, but what it is permitted to do.

Under section 310 (c) of the Act the commission is authorized to fix temporary rates "every month or at any other [fol. 93] interval" and it may in this case at any time give attention to other elements of capital value than original cost less depreciation and fix a legal rate.

And now, to wit, October 15, 1937, the Pennsylvania Public Utility Commission is hereby enjoined and restrained from in any manner enforcing or attempting to enforce its order of July 27, 1937, establishing the rates set forth therein.

By the Court.

(Signed) J. Warren Davis, Circuit Judge.

[fol. 94]

### EXHIBIT III TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

In Equity. No. 1289

EDISON LIGHT AND POWER Co., a Corporation, Complainant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

Bill In Equity for Injunction

### OPINION

This is a suit in equity to restrain the Pennsylvania Public Utility Commission from enforcing an order made by it pursuant to section 310 of the Pennsylvania Public Utility Law of 1937, fixing temporary rates for electricity on the grounds that the statute on which the temporary rates are

based is unconstitutional and that the order fixing the temporary rates is also unconstitutional and invalid.

On January 27, 1936, the Pennsylvania Public Service Commission, predecessor of respondents, instituted on its own motion an investigation, for the purpose of determining the reasonableness of rates charged and to be charged by the Complainant for electric service. Numerous hearings were held by the Public Service Commission and later by respondents. Voluminous testimony and exhibits were introduced and the hearings were concluded on June 23, 1937. Nothing remains to be done except final argument and the determining of final rates by the Public Utilities Commission, after consideration of the record.

At the conclusion of the final rate hearings before the Public Utilities Commission, a hearing was held by it to determine whether temporary rates should be prescribed. The entire record of the permanent rate proceeding was incorporated as part of the temporary rate proceeding. On July 13, 1937 the Public Utilities Commission ordered the Complainant to put into effect temporary rates for electricity, pending a determination of final rates, which would effect a reduction of approximately \$435,000.00 in its annual gross operating revenue. The Public Utility Commission found from a study of the record evidence, that a proper basis for the prescription of temporary rates is \$5,250,000 and for the purpose of determining temporary rates, applied a rate of six per centum, thereby allowing \$315,000.00 for return. It was stated that on the basis of the allowance, the arithmetical difference between the allowable and actual gross revenue during the year ended December 31, 1936 was \$524,000.00, but the actual reduction ordered was only [fol. 95] \$435,000.00. Pursuant to an opinion of the Superior Court of Pennsylvania in Pennsylvania Power and Light Co. vs. Public Service Commission, the Public Utility Commission made a second order on July 27, 1937 rescinding the first order but requiring the same rate reduction and fixing a schedule of temporary rates.

Due to the pendency of the proceeding before the Court, the Public Utility Commission has extended the effective date of the temporary rate order to October 15, 1937.

The contentions of the complainant are that Section 310 of the Public Utility Law, under which the temporary rate order was made, is contrary to the Fourteenth Amendment to the Constitution of the United States of America and



that the order also violates the Fourteenth Amendment by confiscating the property of complainant.

Two questions arise here, first, the constitutionality of Section 310, and secondly, the validity of the order of July 27, 1937, fixing the temporary rates.

Section 310 provides: "(a) The Commission may in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing if it be of opinion that the public interest so requires immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding. Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service and if the duly verified reports of such public utility to the commission do not show such original cost less accrued depreciation of such property the commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinbefore provided.

"(b) If any public utility does not have continuing property records kept in the manner prescribed by the commission under the provisions of section five hundred two of this Act then the commission after reasonable notice and hearing may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first one thousand nine hundred thirty-five or such other subsequent year as the commission may deem proper to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five or such other subsequent year as the commission may deem proper plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property the commission may in its discretion deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or in lieu thereof it may determine such net changes by de-

[fol. 96] ducting retirements from the gross additions Provided That the commission in determining the basis for temporary rates may make such adjustments in the annual report data as may in the judgment of the commission be necessary and proper.

“(c) The commission may in the manner hereinbefore set forth fix, determine and prescribe temporary rates every month or at any other interval if it be of opinion that the public interest so requires and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month or at any other interval such temporary rates as it has previously fixed, determined and prescribed.

“(d) Whenever the commission upon examination of any annual or other report or of any papers, records, books or documents of or of the property of any public utility shall be of opinion that any rates of such public utility or producing a return in excess of a fair return upon the fair value of the property of such public utility used and useful in its public service the commission may by order prescribe for a trial period of at least six months which trial period may be extended for one additional period of six months such temporary rates to be observed by such public utility as in the opinion of the commission will produce a fair return upon such fair value and the rates so prescribed shall become effective upon the date specified in the order of the commission. Such rates so prescribed shall become permanent at the end of such trial period or extension thereof unless at any time during such trial period or extension thereof the public utility involved shall complain to the commission that the rates so prescribed are unjust or unreasonable. Upon such complaint the commission after hearing shall determine the issues involved and pending final determination the rates so prescribed shall remain in effect.

“(e) Temporary rates so fixed, determined and prescribed under this section shall be effective until the final determination of the rate proceeding unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed under this section the commission shall consider the effect of such rates in fixing, determining and prescribing rates to be thereafter demanded or received by such public utility on

final determination of the rate proceeding. If upon final disposition of the issues involved in such proceeding the rates as finally determined are in excess of the rates prescribed in such temporary order then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

The above provisions of the Pennsylvania Statute follow closely the temporary rate provisions of the recent New York State Law. The New Act "authorizes," while the Pennsylvania Act "requires" the commission to consider [fol. 97] the effect of the temporary rates in fixing the permanent rates.

The question of the constitutionality of the temporary rate provisions of the New York statute was before the Court of Appeals of New York in the cases of *Bronx Gas & Electric Co. vs. Maltbie*, and *Yonkers Electric Light & Power Co. vs. Maltbie*. That court, in the opinion filed July 8, 1926, 3 N. E. (2d) 512, 271 N. Y. 364, held that the statute met all the requirements of the Constitution. The reasoning and conclusion in that case applies equally to the case now before this Court.

Prior to the enactment of the statute considered in *Bronx Gas & Electric Co. vs. Maltbie*, the validity of temporary rates under a previous New York statute was before the Supreme Court of the United States in *Prendergast vs. N. Y. Tel. Co.* 262 U. S. 43. These temporary rates were put into effect until final rates were fixed, but there was no provision for recoupment in case the temporary rates were too low. The Supreme Court accordingly held that the temporary rates, so long as they were in effect, were in reality final rates, and if they were confiscatory, the utility company would be deprived of a reasonable return upon its property during such period. Accordingly so long as a temporary rate provided no means for recoupment, the temporary rate must satisfy the same requirements as a final rate, and must give a fair return upon all elements of capital value which must be considered in making a final rate. The purpose of a Temporary rate is to force a public

utility to give the consumers the benefit of reasonable rates pending the proceedings to fix a final rate. These rate proceedings often last for years, and meanwhile, if no temporary rates are fixed, the public is often required to pay unreasonable rates and the utilities are meanwhile permitted to make unreasonable profits. In making temporary rates where recoupment is provided for it may not be necessary for the commission to consider all the elements of fair values which must be considered in establishing final rates, but it must consider all the elements required by the statute and such elements as will provide a fair return so as to avoid confiscation. Such elements of fair value as are considered in making temporary rates should be stated in the order fixing temporary rates.

It was the evident purpose of the Pennsylvania Legislature, in passing this Act, to meet the criticism of the Prendergast case, and to remove the burden placed upon the consuming public. The Act provides that the temporary rate shall provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property of the public utility, used and useful in the public service. The Public Utility Commission may fix a temporary rate above the five per centum limitation, if the facts warrant; but they cannot go below five per centum even though a reasonable rate might be less than five per centum. This five per centum rate is not the standard set for the Public Utility Commission; it is the lowest limit which may be fixed. It is thus a safeguard for the benefit of the utility. While the method of fixing a temporary rate does not provide for all the elements of fair [fol. 98] value that are necessary to be considered in fixing a final rate, it provides for one of the important elements. The result can be speedily attained and is not altogether based upon opinion and speculation.

The Act requires the Public Utility Commission, in fixing the final rates, to consider the experience of the temporary rates, and if the final rates are in excess of the temporary rates, the public utility is permitted to recover the difference by temporary rate increases. If any temporary loss is suffered, the difference is made up to the utility in the final rates, and thus fair rates are secured, confiscation avoided, and the Constitutional requirement met. This remedy of the utility against the consumers is no different than the remedy given to the consumers against the utility. If the

one meets the Constitutional requirements, so does the other. As was said in the case of *Bronx Gas & Electric Co. vs. Maltbie*: "If the courts required the public utility company to put up a bond to pay back to the consumers the overcharges which it had exacted, pending a hearing, why was it not just as feasible and legal to turn the remedy about and provide that the consumers or the public should make good to the company the loss which it may have sustained in temporarily exacting too little. This is what our Legislature has done, and this we think is the meaning which we must give to its language, if it is to have any sense at all in the light of the past." The Court of Appeals further said: "True it is that all the consumers paying the final rate, including the take-up, may not be the same as those who paid the temporary rate. A few consumers may be new customers paying what the consumer should have paid. Such instances are of minor importance; the percentage must be very small. We can never work our institutions of government if we refine matters to such an extent that we have to consider all these little details. The Constitution expressed fundamental principles, and if in the main these have been observed this is all that can be required. Besides, when we speak of the consumer-the customer we mean the public, not individuals. See *San Diego Land and Town Co. vs. Jasper*, 189 U. S. 439, 23 S. Ct. 571, 47 L. Ed. 89, 892."


The Court of Appeals of New York finally concluded: "We, therefore, are of the opinion that this law is not unconstitutional; that it meets the defects in prior procedure, and affords the company ample protection as well as the consumer. It is a fair attempt to meet the time element, which is necessary to be considered in rate-fixing hearings."

I agree with the reasons and conclusions of the New York State Court of Appeals and I am of the opinion that the temporary rate provisions of the Pennsylvania Public Utility Law are Constitutional and afford ample protection to the complainant.

Secondly, the validity of the order of July 27, 1937, fixing the temporary rates. The order does not state any element of fair value on which the temporary rates were fixed. A reviewing court is therefore unable to determine from the order whether any elements and if any what elements of fair value were considered as required by the statute. Since the order of July 13, 1937 was rescinded, it is therefore of



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[fol. 99] no effect and cannot now be considered by this Court. I do not concur in granting a permanent injunction but I would stay the collection of temporary rates for a period of fifteen days to afford the commission an opportunity to state in its order of July 27, 1937, the elements of fair value on which the temporary rates were based.

(Signed) Albert W. Johnson, U. S. District Judge.

[fol. 100]

EXHIBIT IV TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

No. 1289

EDISON LIGHT & POWER COMPANY, a Corporation, Complainant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard, and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

CONCURRING OPINION

With the conclusion reached in the opinion of the Court I am fully in accord, but I do not agree with the reasoning by which that conclusion is reached. In my opinion the Pennsylvania statute itself is not unconstitutional. That a state statute permitting a regulatory commission to fix temporary rates to be charged by a public utility is permissible so long as it does not result in confiscation has been recognized by the Supreme Court. *Prendergast vs. N. Y. Telephone Co.*, 262 U. S. 43, *Public Service Commission of Wisconsin vs. Wisconsin Telephone Co.*, 289 U. S. 67. I agree with the reasoning in *Yonkers Electric Light & Power Co. vs. Public Service Commission*, 271 N. Y. 364, 3 N. E. (2d) 512, in which the Court of Appeals of New York found not to be unconstitutional the Public Service Law which contains similar provisions as to the fixing of temporary rates by the Public Service Commission of New York. In the

Yonkers Electric Light & Power Co. case the Court said with reference to the Public Service Law:

"It meets the defects in prior procedure, and affords the company ample protection as well as the consumer. It is a fair attempt to meet the time element, which is necessary to be considered in rate-fixing hearings."

The remaining question is whether the order of the Commission dated July 27, 1937, violates the Fourteenth Amendment to the Constitution.

The order of the Commission dated July 27, 1937, is the only order of the Commission before the Court for consideration. A prior order and report dated July 13, 1937, were rescinded. The order dated July 27, 1937, directs the Complainants to file a tariff effecting a reduction of approximately \$435,000.00 in its annual gross revenues by the establishment of certain rates set forth in the order, which tariff the Commission found to be reasonable and proper for the purpose of temporary rates and that is all. The Commission made its conclusion but did not find any basic facts. It made no findings whatever from which it is possible for the [fols. 101-102] Court to determine whether one affected by such determination has been deprived of legal rights. Unaided by findings this Court is certainly not called upon to search the voluminous record to find a basis for the Commission's order, which might not be the basis, if any, upon which the Commission relied.

In *Pennsylvania Power & Light Co. vs. Public Service Commission*, 193 Atlantic Reporter 427, the Court said:

"This is but a recognition of a fundamental principle that where the Legislature delegates powers to an extra-judicial tribunal appointed to determine property values or rights and the tribunal acts in such matters, it must make such findings that on a review by the Court it is possible to determine whether one affected by such determination has been deprived of legal rights."

In *Ohio Bell Telephone Co. vs. Public Utilities Commission of Ohio*, 301 U. S. 292, Mr. Justice Cardozo in the opinion of the Court, said:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be

refunded upon the strength of evidential facts not spread upon the record.

"Upon the strength of these unknown documents refunds have been ordered for sums mounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs today. This is not the fair hearing essential to due process. It is condemnation without trial.

"From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion. Not only are the facts unknown; there is no way to find them out."

Clearly it was the duty of the Commission to make findings of fact as to the basis upon which the rate reduction was ordered and not having done so its action was arbitrary and violates the due process clause of the Fourteenth Amendment of the Federal Constitution.

In fixing temporary rates the Commission should, in my opinion, consider those elements which the Supreme Court has said must be considered in fixing a fair rate. *Smyth v. Ames*, 169 U. S. 466, 546; *Des Moines Gas Co. vs. Des Moines*, 238 U. S. 153, 165. These need not be considered with the same care, particularity and thoroughness with which they must be considered in fixing final rates but they must be considered to such an extent that confiscatory temporary rates will be avoided. In most cases and certainly in this case such a requirement will not place any extra burden upon the Commission and should not cause any unreasonable delay.

I express no opinion as to whether the rates set forth in the order of July 27, 1937, might be shown to be reasonable and proper but, in my opinion, as the record now stands the only course open to this Court is to enter a decree enjoining the Pennsylvania Public Utility Commission from enforcing its order of July 27, 1937.

(Signed) Albert L. Watson, District Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
COMMONWEALTH OF PENNSYLVANIA

THE PUBLIC SERVICE COMMISSION OF THE  
COMMONWEALTH OF PENNSYLVANIA,

vs.

EDISON LIGHT AND POWER COMPANY,

C. 11108-36.

Inquiry and investigation upon the Commission's own motion for the purpose of determining the fairness, reasonableness and justness of the rates, charges and regulations of the respondent company, as contained in its tariff Electric P.S.C. Pa. No. 8, and the supplements thereto. Initial hearing.

Hearing held at the offices of the Public Service Commission, Harrisburg, Pa., on Wednesday, October 28, 1936, at 10:30 o'clock a. m., Eastern Standard Time.

Present: COMMISSIONER STAHLNECKER, Presiding:

SAMUEL G. MILLER, Esq. (Harrisburg, Pa.), for The Public Service Commission, complainant;

J. HARRY LABRUM, Esq. (1507) Packard Building, Philadelphia, Pa.),

CHARLES H. ENGLISH, Esq. (Erie, Pa.), and

V. K. KEESEY, Esq. (York, Pa.), for the Edison Light and Power Company, respondent.

The Commissioner: Before we start the hearing, I want to say one thing about this matter.



*Colloquy*

We all know that these rate cases are apt to be very expensive and long drawn out for all parties concerned, and if there is any means of shortening the matter, I think it would be an advantage to all parties concerned—the rate payers, the company itself, and the Commission.

It has occurred to me that perhaps the parties, in the matter of the rate base, might agree upon something fairly definite after a conference between the parties, and I would like to ask counsel for the company and Mr. Miller for the Commission whether you can tell me, approximately, what you each propose to prove as a rate base in this case. What I am asking is, is what you expect to prove in that matter, if you are willing to so state. We might save considerable expense if we get a figure on the record. They, perhaps, might be far apart, and I do not want you to prejudice your case in any way.

Mr. LaBrum: This comes as a sort of surprise to us, frankly—

The Commissioner: I am not trying to take you unawares.

Mr. LaBrum: I understand that and we appreciate the cooperation that has been suggested by you, but before we could make any definite statement we would have to confer with our people, because we have not gotten far enough into the matter to determine what we feel is the proper rate base.

As you know, when the proposal was refused, we immediately started a corps of men working, so that we could have something on which we could base the facts for our opinion, and I would suggest that we be given an opportunity to confer with our people.

The Commissioner: Of course.

Mr. LaBrum: That would mean, of course, before we could put anything on the record, we would have to have an adjournment.

The Commissioner: I do not propose to have an adjourn-

*Colloquy*

ment. I want to go on with today's hearing and have the Commission put into the record the testimony of its accountants, under any circumstances.

Do I understand, Mr. LaBrum, that until these computations and analyses by your corps of men are completed, you will not be in a position to state what you feel the company will contend for as a rate base?

Mr. LaBrum: No; I don't mean exactly that, Mr. Commissioner. I mean, I am not in a position to state what our authorities feel is the proper rate base.

The Commissioner: What I am trying to get at is, when you made the offer of a reduction, weren't the officials of your company fully advised as to just what their rate base was in their estimation and what relation that bore to the amount of return on that rate base?

✓Mr. LaBrum: I think they were, but I am not sure, Mr. Commissioner, and that is the reason I suggest that I would have to confer with them.

The Commissioner: Are they here?

Mr. LaBrum: No; the officials of the company are not here.

The Commissioner: I would assume that when a company is asked by the Commission or it is suggested to it by the Commission that they should make a reduction to bring in a reasonable return allowed by the Commission that they are making it on what they believe to be the basis of the valuation and—

Mr. LaBrum: That is true. That was made by our accountants and they are not here today. I would like to discuss it with them.

Mr. Miller: Could you do it tomorrow, Mr. LaBrum, do you think?

Mr. LaBrum: Well, I am not sure.

Mr. Keesey: As Mr. LaBrum has said, it is a surprise to us, and we are not prepared to discuss it this morning.

*R. A. McShea, Jr.—For Complainant—Direct*

The Commissioner: I do not think it can be done tomorrow, because all the State officers will take a recess for two or three hours on account of the President's visit, but I take it that at the next hearing in this matter, we could go into it more fully and you would then be prepared to state your respective positions.

Mr. Miller: Mr. Commissioner, I do not think the Commission's figures would give a definite estimate. I have a general idea, of course.

The Commissioner: I will let the suggestion be suspended in mid air until the next hearing.

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EVIDENCE ON BEHALF OF THE COMMISSION

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R. A. McSHEA, JR., having been duly sworn, was examined and testified as follows:

By Mr. Miller:

Q. Will you give your name and address to the reporter, please? A. R. A. McShea, Jr., Harrisburg.

Q. By whom are you employed and in what capacity? A. I am employed in the Bureau of Accounts, Rates and Statistics of the Public Service Commission as a principal examiner.

Q. Are you a certified public accountant? A. I am.

Q. Are you a member of any accounting societies? (No answer.)

Mr. LaBrum: There is no question about his qualifications.

The Commissioner: Do you admit his qualifications?

Mr. LaBrum: Sure.

Mr. Miller: Mr. Commissioner, I would just like

*R. A. McShea, Jr.—For Complainant—Direct*

to ask him certain questions which are particularly relevant to this case.

The Commissioner: All right.

By Mr. Miller:

Q. Will you name some of the electric companies whose books you have examined? A. I have made detailed examinations of the books of Erie Lighting Company, which operates in Erie; Southern Pennsylvania Power Company which operates in portions of Chester and York Counties; Bradford Electric Company, which operates in McKean County; Harvey's Lake Light Company, which operates in a portion of Luzerne County; Pennsylvania Power & Light Company, which operates in 29 counties in eastern and central Pennsylvania; and Edison Light & Power Company, the present respondent.

Now, in addition to that I have made brief examinations for various purposes, specific purposes of the books of Duquesne Light Company, Pennsylvania Electric Company and Philadelphia Electric Company, the latter in connection with the Conowingo hydraulic power development.

Q. And what other duties have you performed for the Commission in connection with electric companies? A. I have prepared or assisted in the preparation of Commission opinions in rate cases, security cases and merger and consolidation cases. This involved detailed studies of the testimony and exhibits presented in those cases.

In the last two years I have spent a great deal of time preparing rate of return calculations involving nearly every type of public utility operating in Pennsylvania and have participated in many conferences held by the Commission or its representatives with representatives of the companies for the purpose of reviewing the rate situations of those companies and securing rate reductions or adjustments where possible.

*R. A. McShea, Jr.—For Complainant—Direct*

I had charge of the revision of the form for annual reports for electric companies in 1933; these forms becoming effective in 1934.

I have made office accounting studies of particular public service companies, including practically all of the electric companies operating in Pennsylvania to determine the approximate rates of return earned. These office studies were supplemented in many cases by field examinations of the accounts.

Q. When did you make your first examination of the respondent's books? A. Early in 1930—about February and March, I believe—I examined the books of the respondent for the period from 1913 to 1929, inclusive.

Again, in 1933, I made a detailed examination and brought the work down to the end of 1932.

We began the most recent examination late in August, and our men are still there, they haven't finished the work yet.

Q. That is, August of this year? A. August of this year, 1936, that's right.

Q. Are you familiar with the record in Application Docket 33811, which was heard in 1935, covering the joint application of York Railways Company and Edison Light & Power Company (the latter being the present respondent) for approval of the merger and consolidation of said companies into a new corporation to be known as York-Edison Company? A. Yes; I have reviewed the entire record.

Q. For what purpose? A. Well, among other things, my duties have been to watch the earnings of public service companies and it is my policy to follow all cases, such as this merger case, which might give me some indication of the property values and the earnings of the companies and, of course, when the merger case of these two companies—the York Railways Company and Edison Light & Power Company—was brought



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before the Commission, I was interested from the standpoint of earnings.

Q. And what evidence did you find in that record, at Application Docket 33811, relative to the value of the property of the present respondent?

Mr. LaBrum: Just a moment. I object, if your Honor please. I take it that this is a valuation case and that we are not bothering about any former or future cases, and I think, properly, he can only testify as to what he himself discovered from the books of the company and not what is contained in another record. I think it is irrelevant and immaterial.

Mr. Miller: I certainly think he can testify as to what he found in the records of the Commission submitted in an application filed by this company.

The Commissioner: It seems to me that that point is well taken. I agree that as a general thing, it is not proper to take this or that out of an old record, which might not have any particular bearing on the present case, but in this matter an inventory and appraisal were filed by this company and sworn to as being correct by representatives of the company in another proceeding. Now, if that is corrected or modified by competent evidence in this proceeding, well and good, but as far as this record is concerned, certainly an examination of that particular inventory and appraisal in the matter, it seems to me, would be proper in this proceeding, subject, of course, at all times to amendment or revision or modification as competent evidence may be developed by the company.

Mr. LaBrum: With that situation, as your Honor has stated it, we won't make an objection.

*R. A. McShea, Jr.—For Complainant—Direct*

By Mr. Miller:

Q. Will you answer the question? A. Attached to the application, as part of Exhibit 31—that is, Application Docket 33811—was a statement sworn to by J. E. Wayne, President of the respondent to the effect that the value of the respondent's physical property, as appraised by Day & Zimmermann, Incorporated, engineers of Philadelphia, as of June 30, 1934, amounted to \$5,324,324.

Q. How was the total estimated value of \$5,324,324 classified in Exhibit 31? A. It was classified—

Mr. LaBrum: Just a moment. If your Honor please, the record speaks for itself. Now, that he is testifying from a record, let us have the production of the record and let us see the record from which he is testifying. Apparently that is not the record (indicating). He has some papers there from which he is testifying.

Mr. Miller: Mr. Commissioner, we have here the report of Day & Zimmermann and we would be perfectly satisfied to have Mr. LaBrum check Mr. McShea's answers page by page.

Mr. LaBrum: What I am calling attention to is the fact that this is an appraisal and this is a valuation proceeding.

Mr. Miller: That is correct, but valuation proceedings usually start with appraisals, and I think it is rather strange for the respondent here to complain about their appraisal.

Mr. LaBrum: We are not complaining.

The Commissioner: That was presented in that particular proceeding as an opinion of the officers of that company, authorized to speak for it?

Mr. LaBrum: As of 1934.

The Commissioner: As of 1934, exactly.

Mr. Miller: Mr. Wayne, the president of the re-

*R. A. McShea, Jr.—For Complainant—Direct*

spondent, swore to the application with which this exhibit was filed and swore to the fact that it represented the value of the property for the purposes of that case.

Now, we don't agree with everything in that inventory and appraisal and I take it that the respondents do not, and we do not assert that that represents the fair value of the property.

Mr. LaBrum: Mr. Commissioner, if I may say a word. I am not quite sure of what Mr. McShea is talking about, but the question of values and the book entries, as stated in those merger proceedings and as your Honor said, a few minutes ago, have no bearing in this case.

The Commissioner: I did not say that they had no bearing in this case. I said, any reference to the figures and records in this case would seem to be entirely proper and that the company had their proper right to make any modifications, or changes, or increases, or reductions if they could produce competent evidence to that effect.

Now, if Mr. Miller wishes to offer testimony based on that appraisal as presented in the other case, I think it would be illuminating in this case. As he, himself, says it is not conclusive as to the values at the present time, but I think there are certain illuminating facts which we ought to have in this record.

If there is any objection, I will overrule it.

Mr. LaBrum: Your Honor, we have no objection. It is more or less the use of the terms. We certainly believe that is a correct appraisal.

The Commissioner: That is the appraisal presented or prepared by Day & Zimmermann.

Mr. Miller: That is correct, and when I ask Mr.

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McShea certain questions I do not want his answers to be binding upon the Commission as showing the values.

The Commissioner: 'Mr. McShea's analyses of the figures submitted to the Commission, as to what they show, is not binding upon anybody.

Mr. LaBram: May I suggest, Mr. Commissioner, that when Mr. McShea testifies he enumerate or state the pages where it appears, so that we will have a direct reference to whatever he is testifying to in the record.

By Mr. Miller:

Q. I believe the last question was: How was the total estimated value of \$5,324,324 classified in Exhibit 31? A. It was classified according to the classification of accounts prescribed by this Commission for electric companies, effective January 1, 1919.

Q. Did Exhibit 31 include the net additions made to property, subsequent to June 30, 1934? A. The cost of the net additions, as sworn to by Mr. Wayne, covering—

Q. Now, will you just answer the question: Did Exhibit 31 include the net additions made to property, subsequent to June 30, 1934? A. I think it did, but I am not exactly sure that the Exhibit 31 included both the appraisal and the additions.

By the Commissioner:

Q. When was Exhibit 31 offered? A. It was attached to and made a part of the application, as I recall.

Q. And of what date, approximately? A. That was at the time that the application was made, whenever that was.

Q. When was that, about? A. Probably late in 1934.

Q. Then, how could that exhibit show additions beyond 1934? A. It was sometime in 1935, because it was included in that application as one of the exhibits: the additions from June 30, 1934, to March 31, 1935.

*R. A. McShea, Jr.—For Complainant—Direct*

Q. It ran up to March 31, 1935? A. Yes, sir; so it must have been after March 31, 1935.

The Commissioner: All right.

By Mr. Miller:

Q. To clarify the matter somewhat, was Exhibit 31 the appraisal by Day & Zimmermann? A. It was not the appraisal by Day & Zimmermann. It was a duplicate copy of something prepared by somebody in the York Railways organization and attached to the application for approval of the merger and consolidation as Exhibit 31. Now, that's the way I recall it.

By the Commissioner:

Q. This volume that you have there (indicating), Exhibit No. 31 is not included in it? A. That isn't Exhibit 31 (indicating).

By Mr. Miller:

Q. However, Mr. McShea, in Exhibit 31 were or were not the additions to plant from the date of the Day & Zimmermann appraisal to March 31, 1935, included? A. Well, they were included some place in that record—I think attached to the application—but whether they were included in Exhibit 31 as something, I don't know right now, I don't recall right now.

Q. We will get that when we get the record. Do you know the figure given by Mr. Wayne in that record as to the plant valuations between June 30, 1934 and March 31, 1935? A. Those additions were shown by Mr. Wayne to amount to \$135,818.54.

Q. Did Exhibit 31 reflect the depreciation which accrued during the period from June 30, 1934 to March 31, 1935?

Mr. LaBrum: Just a minute. I hesitate to object so much, Mr. Commissioner, but there are records available, and he is testifying from a book when the records are



*R. A. McShea, Jr.—For Complainant—Direct*

available. I do not for a moment say that they are not correct, but we want an opportunity—

The Commissioner: You have sent up for it, haven't you?

Mr. Miller: Yes.

Mr. Keesey: What we are saying is that it seems to be an effort to bind the company in proceedings which were made not in a rate case but in a merger proceeding.

The Commissioner: The purpose of the Commission, as I understand it, up to this time and in this testimony as to this appraisal and the exhibit bearing on it, is to show the nature of the appraisal and exhibit, not taking the position that that is the final word in this proceeding. I think it is of interest to have that picture shown as part of this record but not as the conclusive picture.

Mr. Miller: We do not propose to stop as long as we have not shown what that exhibit shows, and we have no objection whatever if the company desires—

The Commissioner: Your position is not that this appraisal is a final, conclusive picture of the value of this property?

Mr. Miller: Not at all, Mr. Commissioner, but we think that it is relevant as to the value, and we think that Day & Zimmermann are a competent firm of engineers, and we also think that Mr. Wayne, when he swore to that application, probably knew what he was doing.

Now, I think if Mr. McShea answers the last question, as to whether or not Exhibit 31 reflected depreciation which accrued during the period from June 30, 1934, to March 31, 1935, that the company will find his answer is not objectionable.

Mr. LaBrum: As shown by the books, you mean, or on this exhibit?

*R. A. McShea, Jr.—For Complainant—Direct*

Mr. Miller: It is not shown on this exhibit. As a matter of fact, Mr. McShea is just going to state that.

Mr. LaBrum: That's all right. Go ahead.

The Witness: The appraised value as of June 30, 1934, was a depreciated value or figure. Now there was nothing in that record which brought the depreciation down to March 31, 1935.

By Mr. Miller:

Q. By what amount did the Reserve for Renewals and Replacements, as shown by the books, increase during the period from July 1, 1934, to March 31, 1935? A. The reserve amounted to \$1,854,098.26 on July 1, 1934 and on March 31, 1935, it amounted to \$1,971,296.07, an increase of \$117,197.81 during that period.

By the Commissioner:

Q. For how long? A. Nine months.

By Mr. Miller:

Q. Then, taking the Day & Zimmermann estimate as of June 30, 1934, which was submitted as described and amounted to \$5,324,324, adding the net additions at \$135,818, and subtracting the figure of \$117,198 for the increase in the renewal and replacement reserve from June 30, 1934, to March 31, 1935, what would be the resultant estimate of value, and by "value", Mr. McShea, I do not mean necessarily value for the rate case. I mean, what would be the resultant figure? A. You mean the adjusted appraised figure?

Q. That's right. A. \$5,342,944.

Mr. Miller: Now, we do not agree that that is a fair value figure at all, Mr. Commissioner. We think it is much too high and maybe the company thinks it is too low, but I will ask Mr. McShea this question:

*R. A. McShea, Jr.—For Complainant—Direct*

By Mr. Miller:

Q. How much, assuming only for the moment the \$5,342,944 to be the fair value as of March 31, 1935, for rate-making purposes—how much should the company have been permitted to earn per annum at six per cent? A. \$320,577.

Q. Do you know the undepreciated book value of the respondent's property on March 31, 1935? A. Well, according to Exhibit 19 of the record—

Q. Mr. McShea, we now have the famous Exhibit No. 31, and it shows additions in the period, which I have mentioned to you, at \$135,818.54. Was that the amount which you gave in your prior testimony? A. That's right; yes, sir.

Q. Now, I believe you were going to answer my question as to the undepreciated book value of the respondent's property on March 31, 1935. A. According to Exhibit 19, in Application Docket 33811, it was \$4,646,878.31.

Q. What was the amount of the Reserve for Renewals and Replacements on the same date? A. It was \$1,971,296.07.

By Mr. LaBrum:

Q. What was that figure? A. \$1,971,296.07. That's Exhibit 19. The figure I am giving now is the one shown on the books.

By Mr. Miller:

Q. That \$1,971,296.07, is that shown on Exhibit 19, or is it the actual amount in the Reserve for Renewals and Replacements, or did you obtain that directly from the books of the company? A. I believe I got that directly from the books; and my former statement that it came from Exhibit 19 was wrong.

By the Commissioner:

Q. The difference between that figure and Exhibit 19 is about \$3,000? A. I believe that's right.

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By Mr. Miller:

Q. Now, taking the one million, nine hundred thousand odd figure, which you obtained from the books, and deducting it from the four million, six hundred thousand rounded figure, which you obtained from Exhibit 19 of the record in Application 33811, what was the depreciated book value on March 31, 1935? A. \$2,675,582.

Mr. LaBrum: Just a minute. That is not the depreciated book value. That is the book value less the retirement reserve, and if you put the question that way we will have no objection to it, but as you have put the question, we think it certainly is objectionable.

The Witness: That is the undepreciated book value of the property less the reserve for renewals and replacements.

By Mr. Miller:

Q. If the book value of the property, less the Reserve for Renewals and Replacements amounted to \$2,675,582, and assuming again, only for the moment, that that was the fair value of the property, how much would the company have been permitted to earn per annum at six per cent? A. \$160,535.

Mr. LaBrum: We have no objection to this, your Honor, but we think it is all irrelevant.

By Mr. Miller:

Q. Have you made a study of the earnings of the respondent from its annual reports to the Commission; and, if so, what period did that study cover? A. I have reviewed the operating results, as reflected by the books, annual reports, and the record at Application 33811.

In the first book examination I covered the period from 1913 to 1929, inclusive. In the second book examination I

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covered the three years from 1930 to 1932, inclusive. The third book examination is now in progress.

Prior to the institution of the instant complaint, I made office studies for the three years ended December 31, 1935, from the annual reports.

Q. Now, what did those studies which you made disclose as to the operating income in the three years ended December 31, 1935 and the twelve months ended March 31, 1935? A. I don't have the figures for the twelve months ended March 31, 1935 here, but I will give them to you for the three calendar years.

Q. All right. A. In 1933 the operating revenues amounted to \$1,818,904.22. The operating expenses, including taxes and provision for renewals and replacements, amounted to \$1,124,084.67, which left an operating income of \$694,819.55.

In 1934 the revenues amounted to \$1,888,101.23. The expenses, including taxes and renewals and replacements, were \$1,164,455.36, leaving operating income of \$723,645.87.

In 1935 the operating revenues amounted to \$1,894,192.80. The expenses, including taxes and renewals and replacements, were \$1,212,341.85, leaving \$681,850.95 as operating income.

By the Commissioner:

Q. Now, Mr. McShea, as to those figures, there is no interpretation by you of those figures? Those are the figures taken from the annual reports of the company? A. That is right. No adjustments have been made of any kind.

Q. And there is no interpretation, but you have taken the figures from the books? A. That's right; that is, at this point.

Q. That is, as to those three sets of figures? A. That's right.



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By Mr. Miller:

Q. To what extent did the operating income in 1935 exceed a return of six per cent on the Day & Zimmermann appraisal adjusted to 1935? A. \$361,274.

Q. To what extent did the operating income in 1935 exceed six per cent on the book value of the property, as listed on the company's books, minus the Reserve for Renewals and Replacements? A. \$521,316.

Mr. LaBrum: Just a minute. I move that that be stricken out. That can't have any part in a valuation proceeding at all and it is drawing conclusions that might be damaging to the public relations of the company. I do not think that is fair examination. I do not want to object all the time to this type of examination, but it is irrelevant in my opinion.

Mr. Miller: I will withdraw the question.

The Commissioner: The question and the answer will be withdrawn.

Mr. Miller: That is satisfactory.

By Mr. Miller:

Q. And now, Mr. McShea, does your use of these amounts, which you stated you took from the annual reports without adjustment, mean that you consider them to represent the proper revenues or expenses and income available for return? A. No. These figures were taken from the annual reports without adjustments of any kind. They are merely given at this time in order to show that the income is considerably in excess of six per cent upon the company's own basis of valuation, as reflected by the Day & Zimmermann appraisal as of June 30, 1934, brought up to March 31, 1935, as I have indicated.

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Mr. LaBrum: I just want to say again, this is not a valuation. The use of the word "valuation" all the time is going to cause a lot of confusion.

Mr. Miller: Mr. LaBrum anticipated my next question.

Mr. LaBrum: Put it on the record to clear the situation up.

By Mr. Miller:

Q. The 1935 operating income of \$681,851, as shown by the books amounts to six per cent on what amount? A. \$11,364,200.

Mr. LaBrum: Now, I can't see the relevancy of this examination. What difference does it make what it amounts to? We are in a valuation proceeding. The effect is to draw a lot of conclusions which have no evidenciary value, and Mr. Miller knows that they have no evidenciary value, and I move that that be stricken out.

The Commissioner: Does the company deny the accuracy of the \$681,000 odd figure?

Mr. LaBrum: Of course not. It is in our annual report, but we object to these questions drawing conclusions and giving opinions in the record, which have no place in this record.

The Commissioner: I do not see where that is an opinion. If \$681,000 odd, is the correct value, then it has a relation to the rate base of so much.

Mr. Miller: The company is entitled, under the resolution of the Commission, to six per cent on its fair rate base. Now, if its earnings amount to—

Mr. LaBrum: The law is that every case must be tried in its own peculiar circumstances, and while the Commission has enunciated that policy, they have also

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followed the rule and in some of these cases have allowed in excess of six per cent.

The Commissioner: What cases?

Mr. LaBrum: I won't be positive of that, but there are one or two cases since that order where the Commission has allowed more than that, and certainly the Supreme Court of the United States have stated that you cannot lay down a definite policy for all cases.

The Commissioner: Has any case gone up to the Supreme Court of the United States where we have tried to limit a utility to a rate of return of six per cent?

Mr. LaBrum: I don't believe so, no; but you know that the rulings of the Superior Court and the Supreme Court have been to that effect, and even the recent rulings of the Superior Court have been that you must consider all the circumstances.

The Commissioner: I would be glad to have you put on the record any cases where they have allowed that amount.

Mr. LaBrum: I haven't any. If I had, I would put them on the record, but I still say that is not fair examination.

The Commissioner: So far as I know, and I think I do know, since the Commission has enunciated the policy—in 1934, I believe—that six per cent was the proper return for a utility—I know of no case in which the Commission has deviated from that policy.

On the other hand, I do know that where the Commission has asked a utility to make a reduction in its rates, and it has accepted a reduction in the rates, which did not bring the company exactly a six per cent return, they accepted that reduction in lieu of having a rate case.

Now, certainly it is common sense that if a com-

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pany will come within reasonable hailing distance of meeting the Commission's requirement of six per cent, the Commission can well afford to go along and thus avoid six or seven years of expensive litigation. I think that may have been the manner in which the Commission may have deviated from the six per cent.

Mr. LaBrum: Oh, no; I did not mean that the Commission has ever deviated. I was just trying to say that Mr. Miller is using arguments in his examination instead of getting the facts on the record.

(Discussion off the record. Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. By whom is the respondent controlled, Mr. McShea?

A. By—

Mr. LaBrum: Now, just a minute. That is a conclusion. Let us get the facts on the record.

Mr. Miller: I propose to state only facts and show facts.

Mr. LaBrum: All right, show facts. What do you mean by the word "controlled"? Just what facts do you intend to show? I call for an offer of proof on that.

The Commissioner: Can't we do it the other way around and ask the witness questions on which his answers may enable him to draw a proper conclusion, and when we get to that point we can argue as to whether he has reached the proper conclusion or not?

By Mr. Miller:

Q. By whom is all of the capital stock of the respondent owned? A. By York Railways Company.

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Mr. LaBrum: As a matter of fact, we can't see, Mr. Commissioner, what ownership has to do with the rate of return. I don't see where it is relevant at all. We haven't any objection. The facts are of record.

The Commissioner: Proceed.

By Mr. Miller:

Q. What company owns the majority of the stock of the York Railways Company?

Mr. LaBrum: Now, I object to that. That is irrelevant and immaterial.

Mr. Miller: We do not think so. We propose to show that the respondent is affiliated with various companies with which it has business dealings, and, under all the decisions, dealings of that nature with affiliates will bear very close scrutiny by the Commission to determine the reasons or the results of such dealings and we think it is perfectly proper.

Mr. LaBrum: I take it that you are finished with your valuation and that you are referring now to operating expense, is that right?

Mr. Miller: We have not attempted to put in any valuation testimony. Our testimony as to the Day & Zimmermann estimate and as to Mr. Wayne's sworn statement in the prior proceeding was only to indicate at the start of the case that in our opinion the present rates were too high.

(Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. By whom is the majority of the capital stock of the York Railways Company owned? A. By the Municipal Service Company.



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Q. And by whom is the majority of that company's stock owned?

Mr. LaBrum: Just a moment. I do not quite see the value of these questions, when all this information was brought out in the prior proceeding. We have no objection to it except that it is already in the record.—

—(Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. Will you answer the question? A. Nearly all the common stock is owned by National Public Service Corporation and pledged under one of its obligations, but the Municipal Company is under control of Associated Gas & Electric Company, which holds a majority representation on the board of directors. Associated Gas & Electric acquired control in the middle of 1934 through the purchase from Chase National Bank, New York, of almost \$4,000,000 of unsecured notes of the company payable to affiliates and pledged by them under bank loans.

Q. Is the National Public Service Corporation at the present time in existence? A. The National Public Service Corporation, on July 8, 1932, filed a voluntary petition in bankruptcy in the Federal District Court and listed assets at \$65,000,000 and liabilities at about \$38,000,000. A receiver was appointed on July 11, 1932, and a referee in bankruptcy was also appointed.

Mr. LaBrum: Just a minute. Where does all this information—

Mr. Miller: We can agree with Mr. LaBrum that this testimony is not specifically relevant to the dominant issues in this proceeding, but they do round out the picture and should be in the record for the information of the Commission.

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Mr. LaBrum: We have no objection to it except it is immaterial.

The Commissioner: I agree with you that past ownerships are not in point here. Proceed.

By Mr. Miller:

Q. Where is the respondent's office located? A. At 27 West Market Street, York, Pa.

Q. Does the respondent own the office building in which it is located? A. It does.

Q. Is the respondent the only occupant of that building? A. No.

Q. What other companies have their offices there? A. The York Railways Company, York Steam Heating Company, York Bus Company, and Glen Rock Electric Light & Power Company.

Q. Are these companies affiliated with the respondent company? A. They are. The York Railways Company, which owns all of respondent's capital stock, also owns all of the capital stock of the York Bus Company and York Steam Heating Company, and all of the voting stock of the Glen Rock Company is owned by Municipal Service Company.

Q. Do these affiliated companies share with respondent the cost of operating the office building? A. These companies share the cost of electricity, steam heat, telephone operator, and janitor service only.

Q. Do these companies pay the respondent rent for the use of the offices? A. No; they share all of the expenses that I have enumerated and pay nothing additional as rental.

Q. Do you know the value of the general office land and building at 27 West Market Street, York?

Mr. LaBrum: Just a minute. I object. Let us qualify him before he gets into the value of properties.

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A. According to an appraisal by Day & Zimmermann in 1934, the land was placed in there at a reproduction cost of \$89,000 and the building at a reproduction cost, less depreciation, of about \$75,000, and because all of the general buildings were depreciated in about that ratio—about twenty-five per cent—I applied that to this specific building—or a total depreciated reproduction cost of about \$164,000. Now, that I believe is different overheads and the intangibles.

By Mr. Miller:

Q. Did you investigate the respondent's corporate history?

A. I did.

Q. From what sources did you derive your information as to that? A. Well, at various times, from 1914, when the Commission was organized, down to the merger case of 1935, applications have been made by this company in connection with perhaps some of its affiliates for various purposes.

There was a merger in 1915—I think the application number was 2091; I am not sure—which involved the organization of the present Edison Light & Power Company and the Merchants Electric Light, Heat & Power Company and some other operating companies. Now, in that record were contained a great many papers relating to the set-up of the present Edison Light & Power Company or the companies that now make up the present Edison Light & Power Company.

Mr. Miller: Mr. Commissioner, I shall next ask Mr. McShea to state, briefly, what is the respondent's corporate history. It is a little bit dry, but I think it will give the picture to the Commission a little bit better.

By Mr. Miller:

Q. Will you relate, briefly, the corporate history of the respondent? A. The present Edison Light & Power Company, respondent, received letters patent on July 15, 1915. It was

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formed by merger and consolidation of the first Edison Light & Power Company—

By the Commissioner:

Q. You mean the first Edison Light & Power Company at York, Pennsylvania? A. Yes, sir. There was one company that received letters patent in 1913, known as the Edison Light & Power Company. In 1915, that Edison Light & Power Company was merged with the Merchants and some others.

Q. When you say the "first Edison Light & Power Company" you mean the first in York and vicinity? A. That's right—Merchants Electric Light, Heat & Power Company and five non-Operating companies by virtue of an agreement of merger and consolidation dated June 26, 1915. The first Edison Light & Power Company received letters patent on May 29, 1913, and was formed by virtue of an agreement of merger and consolidation dated May 8, 1913, between York & Windsor Electric Light Company, Edison Electric Light Company and fourteen non-operating companies.

Edison Electric Light Company received letters patent on April 13, 1885, and the York & Windsor Company received its letters patent on April 1, 1905. The Merchants Electric Light, Heat & Power Company received letters patent on December 14, 1900.

The York & Windsor Electric Light Company was formed by merger and consolidation under agreement dated March 15, 1905, between Red Lion Electric Company and three non-operating companies. The Red Lion Company received letters patent on May 19, 1890.

In 1894, the Edison Electric Light Company acquired the properties and franchise of the Peoples Electric Light Company of York which received letters patent January 9, 1891, and in 1908 it acquired the properties and franchises of The Westinghouse Electric Light, Heat & Power Company of York, Pa., which received letters patent on October 14, 1892. The

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present Edison Light & Power Company, respondent, purchased franchises and properties of seven non-operating companies from 1922 to 1928.

During the period from July 1, 1899 to December 31, 1901, all of the properties and assets of the Edison Electric Light Company and Westinghouse Electric Light, Heat & Power Company were reflected on the books of York Light, Heat & Power Company and the operations were conducted, as far as I have been able to determine, in the name of York Light, Heat & Power Company. On December 31, 1901 these assets were transferred back from the York Light, Heat & Power Company books to the Edison & Westinghouse books.

From 1885 to date, electric service has been rendered by respondent and its predecessors, as follows:

Edison Electric Light Company, from April 13, 1885 to May 29, 1913.

Now, in each of these cases I have given the date of the letters patent. When they actually begun operations I don't have that date.

Peoples Electric Light Company of York, from January 9, 1891 to February 8, 1894;

The Westinghouse Electric Light, Heat & Power Company of York, Pa., from October 14, 1892 to September 28, 1908;

Red Lion Electric Light Company, from May 19, 1890, to April 1, 1905;

York & Windsor Electric Light Company, from April 1, 1905 to May 29, 1913;

Edison Light & Power Company—first, from May 29, 1913 to July 15, 1915;

Merchants Electric Light, Heat & Power Company, from December 14, 1900 to July 15, 1915;

Edison Light & Power Company—the respondent, from July 15, 1915 to present;



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York Light, Heat & Power Company, from July 1, 1899 to December 31, 1901.

Now, insofar as the York Light, Heat & Power Company are concerned, I don't know the date on which they were organized or incorporated, the purposes for which they were incorporated, and whether this period from July 1, 1899 to December 31, 1901 is the only period during which they operated.

By Mr. Miller:

Q. Does the respondent company have the exclusive right to render electric service in the City of York and the territory adjacent thereto? A. No. In the City of York and the entire townships of West Manchester and Spring Garden, and portions of the Township of Manchester, East Manchester and Jackson, the Metropolitan Edison Company also has the right to render electric service.

Q. Is there active competition between the Metropolitan Edison Company and the respondent company? A. I don't believe there is any active competition, by reason of the fact that both companies have had an arrangement for many years regarding a division of the business and territory.

Q. Do you know whether that arrangement has been reduced to writing? A. It has, in the form of an agreement dated January 1, 1935.

The Commissioner: Dated when?

The Witness: January 1, 1935.

(Booklet entitled "Agreement between Metropolitan Edison Company and Edison Light and Power Company covering Division of Business and Territory", dated January 1, 1935, marked Commission's Exhibit No. 1.).

By Mr. Miller:

Q. I show you booklet, marked Commission's Exhibit No. 1, and ask you if that is a copy of the agreement you have men-

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tioned, dated January 1, 1935? A. It is.

Q. Is that the only agreement under which this competitive system or possible competitive system has been worked out?

A. Well, I don't know of any others. It is the current one.

Q. At any rate, it is the agreement dated January 1, 1935?

A. That's right.

Q. Does the agreement, identified as Commission's Exhibit No. 1, clearly indicate the exclusive territory of the respondent, as distinguished from the joint territory? A. Yes. A map of York County is attached to the agreement.

The Commissioner: What is the purpose of this examination?

Mr. Miller: Simply, Mr. Commissioner, to show the territory of the company in York County. This is the map that we have to show that (indicating).

The Commissioner: As far as the so-called retail service is concerned, the company has no competition, has it?

Mr. Miller: No, sir.

The Witness: In the division of the business, as described in the contract, as I understand, all the power business over 100 horsepower is taken care of by the Metropolitan Edison Company and the residential and the commercial business and the small power business is taken care of by the Edison Light & Power Company.

By the Commissioner:

Q. Put it this way: In the classes of consumers which they each serve, there is no competition? A. That's about right; yes.

(Paper entitled "Edison Light and Power Company Net Fixed Capital Additions for the Period from July 1, 1934 to June 30, 1936" marked Commission's Exhibit No. 2.)

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By Mr. Miller:

Q. Have you prepared a statement of the net additions to the fixed capital, as shown by the books of the company, from July 1, 1934 to June 30, 1936? A. I have.

Q. I show you a paper, marked Commission's Exhibit No. 2, and ask you if that is the statement to which you refer? A. It is.

(Paper entitled "Statement of Construction Work in Progress as of June 30, 1936" marked Commission's Exhibit No. 3.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 3 and ask you if that is the statement of construction work in progress as of June 30, 1936? A. It is.

Q. As prepared by you? A. Yes, sir.

(Paper entitled "'Analysis of Account 183. Reserve for Renewals and Replacements' For the Period From July 1, 1934, To June 30, 1936" marked Commission's Exhibit No. 4.)

By Mr. Miller:

Q. Have you prepared an analysis of the Reserve for Renewals and Replacements, as shown by the Company's books, for the period from July 1, 1934 to June 30, 1936? A. I have.

Q. I show you a sheet marked Commission's Exhibit No. 4, and ask you if that is the analysis referred to. A. It is.

(Twelve sheets, the first one being entitled "Statement of Operating Revenues and Kilowatt Hours Sold for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 5.)

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By Mr. Miller:

Q. Now, with reference to revenues, have you prepared schedules of the operating revenues of the respondent? A. I have.

Q. I show you several papers, twelve in all, marked Commission's Exhibit No. 5, and ask you if that is the statement referred to. A. It is.

Q. Now, what periods are covered by these papers identified as Commission's Exhibit No. 5? A. Sheet No. 1 of Exhibit No. 5 is the summary of the operating revenues in dollars and the kilowatt hours sold for the period from January 1, 1931 to June 30, 1936.

Now, for purposes of comparison, I have included the first six months of 1935 also.

By the Commissioner:

Q. The first six months of 1936, you mean? A. Well, also 1935. They are both there.

The Commissioner: Oh, yes; I see.

By Mr. Miller:

Q. Now, on Sheet No. 1, that summary covers five and a half years, does it not? A. That's right, Sheets Nos. 2 to 12 are details and cover the two and one-half years ended June 30, 1936.

Q. Will you explain Exhibit No. 5 in general, Mr. McShea? A. Well, the summary is just merely a summary by company accounts of the revenues received according to the classification made by the company.

Q. And that is shown on Sheet No. 1? A. That is on the upper portion of Sheet No. 1.

Now, you will note that in 1934, Accounts 307, 310 and 314 were dropped and never appeared thereafter for those ac-

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counts. Likewise, for the years 1931, 1932 and 1933, nothing was shown for Domestic Power Account 304, but in 1934 and '5 and '6, those spaces are filled in with revenues from that source.

Q. Why is that? A. That was caused by reclassifying certain operating revenue accounts or reclassifying the revenues of the company.

Q. Were any rate reductions made by respondent company during the five and one-half years ended June 30, 1936? A. Yes. There were several reductions. On September 1, 1933, a reduction of the retail and wholesale power rates was made, calculated by respondent to reduce revenues in the amount of \$32,300 per year.

On February 7, 1935, a reduction of the residential and commercial rates was made, calculated by respondent to reduce revenues in the amount of \$130,700 per year.

On September 1, 1935, the high tension power interchange rates were reduced and calculated by respondent to reduce annual revenues in the amount of \$15,000 per year.

These three reductions aggregated \$178,000 per annum.

Q. Have these reductions actually caused decreases in the annual revenues, as shown on Exhibit No. 5? (No answer.)

The Commissioner: You say, if these reductions in rates caused reductions in the revenues. I take it what you are trying to show, if the reductions as actually made in the rate schedules did not produce in the net result to the company a reduction in the revenues—or perhaps it did, but you are not assuming that that is the only factor involved as to the present position of the company, after those reductions were made?

Mr. Miller: Not at all. We will develop that, Mr. Commissioner.



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By Mr. Miller:

Q. Mr. McShea, what was the situation after the 1933 reduction, which the respondent calculated would reduce revenues in the amount of \$32,300 per annum?

Mr. LaBrum: I think that you ought to say what class these reductions affected, whether commercial, residential, or power.

The Commissioner: I think he described that before.

Mr. Miller: That was stated, Mr. LaBrum. He has stated that the September first reduction was a reduction of the retail and wholesale power rates—is that what you mean?

Mr. LaBrum: Yes.

Mr. Miller: That was included in his answer.

By Mr. Miller:

Q. Now, Mr. McShea, did the 1933 revenues show a reduction in amount as compared with the 1934 revenues? A. It did not.

Q. Did they show an increase? A. They did.

Q. What was the amount of that increase? A. Taking the total operating revenues, the increase was from \$1,818,904, in 1933 to \$1,888,101, in 1934 or \$69,197.

By the Commissioner:

Q. That is not based on the same amount of current that was consumed in the previous year? In other words, there is a pick-up in the amount of current sold by the company? A. That's right.

Mr. Miller: Mr. Commissioner, we are just going into that.

The Commissioner: All right.

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By Mr. Miller:

Q. In 1935, did the revenues increase over 1934, in spite of the February 7th reduction amounting to \$130,700, as estimated by the company? Did the revenues show a decrease of that amount? A. In 1935, the revenues showed an increase of \$6,092 over 1934.

By the Commissioner:

Q. A reduction of how much? A. \$130,700 on February 7, 1935.

By Mr. Miller:

Q. Now, on September 1, 1935, you testified, Mr. McShea, that the high tension power interchange rates of the company were reduced, with the thought that the annual revenues would be reduced in the amount of \$15,000. Is the experience of the company in 1935 in accordance with that estimate? A. That reduction, which was made on September 1, 1935, resulted in four months of that amount being reflected in the 1935 figures.

Well, considering the overall picture, all I can say is that the 1935 revenues exceeded the 1934 revenues by \$6,092.

Q. Taking the first six months of 1936, have the revenues of the company been reduced in comparison with the first six months of 1935? A. There has been an actual increase in the first six months of 1936 over 1935, in the amount of \$36,259.

Q. Now, along the line of Commissioner Stahlnecker's inquiry: Do you mean to state that the respondent miscalculated the effect of these rate reductions? A. No; I don't.

Q. Will you explain that? A. If you will refer to the lower half of Sheet No. 1, you will see that there has been an upward trend in the annual consumption—

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By the Commissioner:

Q. That is, an upward trend after 1933? A. Yes, sir; an upward trend after 1933. Now, there was an increase in the total consumption of \$49,682,041 in 1933—

By Mr. Miller:

Q. That is kilowatt hours, I assume? A. That's right—to 58,217,779 in 1935—that is skipping 1934—an increase of 8,535,738, or about seventeen per cent.

In the first six months of 1936, the total consumption was 29,988,688 kilowatt hours, an increase of about twelve per cent over the first six months of 1935.

Q. Do the respondent's records indicate the reason for this increased consumption and have you determined the reason for this increased consumption from the records? A. They don't, exactly give the reason for the increased consumption, but they do state what the increased consumption—or how it was applied among the various rate schedules.

Q. In other words, the increase in each class of consumers? A. That's right. There may be cases where there was an actual decrease, but in the aggregate there was a substantial increase.

Q. Will you state what the books of the respondent show in that connection? A. On Sheets 2 to 9, inclusive, of Exhibit 5, the revenues, number of customers, kilowatt hours sold, average consumption per customer and average revenue per kilowatt hour have been segregated according to individual tariff schedules for the period from January 1, 1934 to June 30, 1936.

At the top of Sheet 2, lines 1 to 13, are reflected these statistics for Schedule RL of P. S. C. Pa. Tariff No. 8, covering residential lighting service—covering domestic service. There has been a rather steady increase of consumption per customer

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during the entire period of two and one-half years. The average consumption as shown for January, 1934, was 58.56 kilowatt hours per customer, and in January, 1936, it was 68.66 kilowatt hours per customer, or an increase of 10.10 kilowatt hours, or seventeen per cent.

Q. Take the first six months of 1934 and 1936. A. In June, 1934, the average consumption was 49.49 kilowatt hours, and in June, 1936, it was 52.02 kilowatt hours, an increase of 2.53 kilowatt hours, or about five per cent.

Q. Now, do you have data on the remaining tariff schedules? A. Yes, sir; all the data on the remaining tariff schedules are shown on pages 2 to 9.

Q. And, in general, the comments you have made as to tariff schedule RL would be applicable to those? A. Well, not exactly, but in some cases. For instance, the tariff schedule shows on lines 14 to 26, of Sheet No. 2, that there actually has been a decrease in consumption per month.

Q. That is the City Lighting Service? A. That is the City Lighting Service.

By the Commissioner:

Q. Well, that may be due to a number of reasons. There may have been a reduction in the number of lights? A. That's right.

Q. Or in the number of hours used? A. Yes; but in that connection these sheets will speak for themselves insofar as the tariff schedules are concerned.

By Mr. Miller:

Q. Do the revenues shown by Sheets 2 to 9 agree with the total revenues shown by Sheet 1? A. Yes. On Sheet 9 is shown the grand total for the years '34, '35 and the first six months of 1936. That agrees with the summary on Sheet 1.

Q. Now, with reference to Sheets 10, 11 and 12, what do those sheets show? A. These sheets, 10, 11 and 12, show the

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distribution of the various tariff schedules to the accounts, revenue accounts.

Q. And Sheet 10 shows the year ended December 31, 1934; Sheet 11, December 31, 1935 and Sheet 12 of the first six months of 1936, is that correct? A. That's correct.

Q. Have you made an analysis of the cost of production and purchase of electricity by the respondent, as shown on the books and by the records of the company? A. I have.

Q. For what period? A. From January 1, 1931 to June 30, 1936.

Q. Have you reduced that analysis to exhibit form? A. I have.

(Document, consisting of 29 sheets, entitled "Operating Expenses—Accounts 350 to 373, Incl. Generating by Steam Power for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 6.)

By Mr. Miller:

Q. I show you 29 sheets of paper collectively marked Commission's Exhibit No. 6, and ask you if that is the exhibit to which you refer. A. It is.

Q. Will you explain Sheet No. 1 of Exhibit 6? A. Sheet No. 1 of Exhibit 6 is a summary of the cost as shown by the books in Accounts Nos. 350 to 373, inclusive, of generating electricity and steam at respondent's Pershing Avenue power plant, during the five and one-half years ending June 30, 1936. For comparative purposes, the costs for the first six months of 1935 are also shown.

By the Commissioner:

Q. What are those first two items: "Superintendence" and "Superintendence, Altoona"? What do those mean? A. At one time this company, the respondent, was associated in some way with the Penn Central Light & Power Company at



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Altoona, and Altoona, in effect, I believe supervised the operations at York and renders an invoice every month, and the amounts shown by the invoices were distributed to the various departments. It has stopped. As a matter of fact, the last charge was in August, 1933.

By Mr. Miller:

Q. Did you find any vouchers supporting these invoices, any details? A. Well, we didn't go into that because the charges are no longer being made.

Q. Then, I take it that Sheet 1 is a summary of the production costs. Have you prepared a detailed statement of each account which is listed on Sheet 1? A. I have.

Q. Are they the remaining sheets of Exhibit No. 6? A. They are the remaining sheets of Exhibit No. 6. In addition to the dollar figures shown for the various accounts, I have included certain statistical information with respect to the quantities of steam and electricity produced and perhaps a few other things.

By the Commissioner:

Q. Mr. McShea, just go back. On this first page, apparently for some reason, there are a number of items under the "Maintenance" schedule there, which seem to rise almost vertically in 1933 and then drop back again sharply. You drop down at "Exciting Apparatus", whatever "Exciting Apparatus" is. There you have, in '31, \$464; 1932, \$403; 1933, \$5,019. What is the explanation of that, do you know? You see what I mean? A. Yes.

Q. There is apparently almost a vertical rise there for some reason. A. I may have the reason among my papers, if you want me to look it up.

Q. I was just curious about such an astonishing shift. It really is not important. (No answer.)

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By Mr. Miller:

Q. Now, on Sheet 2, what information is shown? A. On Sheet No. 2 is a monthly comparative statement of the kilowatt hours generated and the steam produced from January 1, 1931 to June 30, 1936. You will note that there is very little production of electricity or steam in the summer months, or from May to September in each one of the years.

Q. Is there anything particularly notable on Sheet No. 3? A. Well, Sheet No. 3 covers the cost of superintendence as ultimately charged in Account 350. Now, that's the three Edison accounts, the first one having the general designation of "Superintendence", the second being designated "Superintendence, Altoona," and the third for 1936 only being called "Water Analysis Labor." The only thing I want to say is that the Altoona charges were discontinued in August, 1933.

Q. Now, Sheets 4 and 5 show what, briefly? A. That gives the labor cost of operating the power plant. Q. Do you desire to make any other explanation of the labor charges shown on Sheets 3, 4 and 5? A. No.

Q. Sheet No. 6, what does that show? A. That is a statement of the cost and consumption of fuel, consisting of bituminous and anthracite coal. Line 13 shows the amounts annually charged to Account 355, Fuel. Line 26 shows the annual consumption of bituminous coal, and line 29 shows the annual consumption of anthracite coal. The average costs per ton, including only the coal and freight are shown on line 27 for bituminous coal and on line 30 for anthracite coal.

Q. What was that cost for bituminous coal in the first six months of 1936? A. You mean the average cost?

Q. The average cost? A. \$4.89. Now, the cost of handling, as shown on line 34 includes mainly the wages paid to the operator of the coal crane.

Q. Now, what is covered by Sheet 7? Is it self-explanatory? A. Well, it represents the cost of ashes.

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By the Commissioner:

Q. You mean the sale of ashes? A. Well, it is indicated as the sale of ashes, but when ashes are sold, there will be credits appearing in this account and they will be offset by the cost of the ashes. There are, apparently, certain handling costs which are charged in these debits.

Q. Didn't they have any ashes before 1935? A. There was a reclassification of their accounts beginning in 1936.

Q. It was put somewhere else? A. That's right. The cost is there.

Q. The cost is there? A. Yes; it is somewhere else.

Q. How about the remaining portion of the exhibit, production system, operating costs reflected in Sheets 8 to 12—can you just summarize those? (No answer.)

A recess was here taken until 2:00 o'clock p. m.

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Harrisburg, Pa. Wednesday, October 28, 1936.

2:00 o'clock p. m.

Present: Parties as before noted.

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R. A. MCSHEA, JR. resumed.

Mr. Miller: Will you read the last question?

(Last question read.)

The Witness: Sheet No. 8 shows the cost of various kinds of lubricants.

Sheet No. 9 covers the costs charged to P.S.C. accounts 360 and 361 in 1936 for boiler plant supplies and expenses. Prior to 1936, these charges were included in

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Accounts 358 and 362, 358 being "Water" and 362 being "Other Power Plant Supplies."

Sheet No. 10 reflects the cost of "Other Power Plant Supplies" as charged in Account 362.

Sheet No. 11 is the cost of "Other Power Plant Expenses."

Sheet No. 12 represents the "Miscellaneous Expenses of the Superintendent and Other Employees" for the first six months of 1936.

In the lower part of Sheet 12 are credits made to Edison Account No. 600.12 represented credits taken by Edison Company for steam delivered to the York Steam Heating Company. Prior to 1936, these credits were reflected elsewhere, and they appear for the first time in this account in 1936.

Q. Going back for the moment to Sheet 10, why are there no figures in the 1936 column, in the upper part of the exhibit? A. Well, 1936, the company installed a new or a different system of accounts, different from the one that had been in force there for many years.

Q. And their new account is numbered 600.10, and shows in the lower part of that exhibit, is that right? A. No. 600.10 is the present account, which they consider is synonymous with Account No. 362 "Other Power Plant Supplies." Now, I don't mean by that that this \$175 figure for 1936 is comparable with the figures that appear for the years 1931 to 1935, because various types of expenditures have been charged differently in 1936 than they were in the years prior to 1936.

Q. Well, as I understand it, these figures, which are taken from the books, in your opinion, regardless of the accounting system of the company, reflect the amounts applicable to these items for the months indicated? A. Well, this doesn't reflect my opinion at all. This statement shows the amounts actually

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assigned to Account 362 "Other Power Plant Supplies" by the company during this period.

Q. All right, proceed. A. I am finished with that.

Q. What was the last sheet that you described? A. No. 12 was the last.

Q. And what is covered by Sheets 13 to 19, inclusive? A. These sheets all reflect the amounts charged to the various production system maintenance accounts, during the five and one-half year period. The account captions are self-explanatory—at least, to a large extent.

Q. Have you made a study of the payments made by the respondent for power purchased and the bases upon which the payments were computed. A. I have.

Q. And does that appear on Sheet No. 20? A. Sheet No. 20 of Exhibit 6 is the summary of the cost of all power purchased from January 1, 1931 to June 30, 1936. During this period power was purchased from two sources, namely, the Pennsylvania Water & Power Company and the Metropolitan Edison Company. Prior to January 1, 1935, it was purchased under separate contracts from these two companies. Details of the energy purchased from Metropolitan Edison Company are shown on Sheet 21 and from Pennsylvania Water & Power Company on Sheet 22 for the period from January 1, 1931 to December 31, 1934. These sheets show the monthly amounts paid, the monthly kilowatt hours purchased, and in the case of the Pennsylvania Water & Power Company the monthly kilowatt demands as billed.

Q. Under what arrangements have the general power requirements been purchased since January 1, 1935? A. Power has been purchased since January 1, 1935, under the provisions of a four-party contract dated January 1, 1935. The parties to this contract are Edison Light & Power Company, the respondent, Metropolitan Edison Company, Pennsylvania Water & Power Company, and Safe Harbor Water Power Corporation.



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The contract is to be effective for a minimum period of ten years from March 31, 1935.

Details of the amounts paid by respondent under this contract are shown by Sheet 23, which shows the application of the rates specified in the contract, and the division of the amounts paid thereunder, between Pennsylvania Water & Power Company and Metropolitan Edison Company.

Q. Are there any other contracts for the purchase of power that you know of? A. Yes. Respondent has a contract dated January 1, 1935, with Metropolitan Edison Company for the purchase of power to be delivered by Metropolitan Edison direct to the P. H. Gladfelter paper mills located in the borough of Spring Grove, York County, a large power consumer of respondent. Details of the amounts paid under this contract from January 1, 1935 to June 30, 1936, are shown by Sheet No. 24.

Q. What was the average cost per kilowatt hour of power purchased in 1935 from these various sources? A. Under the four-party contract of January 1, 1935, there were 62,902,300 kilowatt hours received at a total cost of \$506,852.28, or an average price of 8.06 mills per kilowatt hour. In the six months ended June 30, 1936, under the same contract, respondent purchased 32,293,000 kilowatt hours at a total cost of \$252,832 or the average rate of 7.83 mills per kilowatt hour.

Now, the total kilowatt hours purchased in 1935 from all sources, including the Gladfelter contract—the four-party contract—was 67,202,521 kilowatt hours at a total cost of \$549,065.99, or 8.17 mills per kilowatt hour.

In the first six months, there were a total of 33,656,489 kilowatt hours purchased at a total cost of \$262,665.51, or an average of 7.8 mills per kilowatt hour.

Q. Have you prepared copies of these power contracts? A. The Accounting Bureau has prepared copies.

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(Paper consisting of nine sheets, entitled "Wholesale Agreement Edison Light & Power Company, Metropolitan Edison Company, Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation" dated January 1, 1935, marked Commission's Exhibit No. 7.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 7, purporting to be a copy of contract dated January 1, 1935, entitled "Wholesale Agreement, Edison Light and Power Company, Metropolitan Edison Company, Pennsylvania Water and Power Company and Safe Harbor Water Power Corporation," and ask you who prepared that copy? A. The Accounting Bureau of the Commission.

Q. Is it a correct copy, to your knowledge? A. As far as I know. It was done by our typewriting department.

Mr. Miller: I might state, Mr. Commissioner, that so far as the copies of these contracts being placed in evidence is concerned, we realize that they are not the best evidence. We are merely putting them in to get the picture in an orderly fashion, and, of course, they are subject to check by the respondent company or anyone else.

The Commissioner: I take it that there is no objection to that? (No answer.)

(Paper consisting of five sheets, entitled "Wholesale Agreement Metropolitan Edison Company and Edison Light & Power Company" marked Commission's Exhibit No. 8.)

By Mr. Miller:

Q. I show you a paper marked Commission's Exhibit No. 8 and ask you what that purports to be? A. This is a copy

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of the contract between Metropolitan Edison Company and Edison Light & Power Company, dated January 1, 1935, with relation to the source of power for the Gladfelter Paper mills.

Q. A wholesale agreement? A. That's right.

Q. Who prepared that copy? A. That was also prepared by the Bureau of Accounts.

Q. Was it prepared from the original? A. It was prepared from the original file copy.

Q. From the copy on file with the Commission? A. Yes. As a matter of fact, I believe both copies are on file with the Commission.

Q. You have testified to the cost of production of electricity and steam and the purchase of electricity. Were the entire costs of that production and purchase borne by the respondent company? A. No; they were not.

Q. Will you explain that? A. That power plant is used mainly for the production of steam during the heating season, the generation of electricity being incidental. However, as the power plant is owned and operated by respondent, all production system operating costs are paid by it. The steam produced is delivered to York Steam Heating Company, which pays for it upon the basis of a price per thousand pounds condensation. From January 1, 1931 to August, 1934, inclusive, the rate per thousand pounds was 40 cents. From September, 1934, to June 30, 1936, the price was 42½ cents.

Q. How was the price of 42½ cents determined, if you know? A. Well, this price was discussed by the directors of the company at a meeting held on December 27, 1934. The minutes covering the decision or the action taken, I will quote as follows—

Q. Did you examine the minutes themselves? A. I examined the minutes themselves.

“The President stated a study of the cost to the Edison Company of producing steam based on operating and maintenance charges for the first ten months of 1934 resulted in

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its being determined that the cost was forty cents (\$.40)\* per thousand pounds produced.

"Following consideration, it was resolved, on motion duly made, seconded and carried, that the charge for steam for the current year beginning September 1, 1934, to the York Steam Heating, be increased from forty (40) to 42½ cents per thousand pounds."

Q. It was not determined by resolution to be forty cents?

A. It was not.

Q. But it appears that the cost was forty cents? A. That's right—the cost of operation and maintenance.

Q. And they decided to sell it at forty-two and a half cents? A. That's right.

By the Commissioner:

Q. Do you know how the cost of forty-cent steam was determined? A. The officials of the company didn't tell us how it was determined.

(Discussion off the record.)

By Mr. Miller:

Q. Does the forty cent figure, Mr. McShea, include any charges for return on the investment, or depreciation, or taxes? A. No; I don't think it does, for the reason that the President, in the minutes just quoted, said that the cost of forty cents represented the operation and maintenance.

Q. Now, if your interpretation is correct, what does the failure to provide for these items mean? A. Well, it means to me that respondent is not receiving an adequate price for the delivery of steam to the York Steam Heating Company.

Q. Have you prepared a schedule showing the extent of the charges to the York Steam Heating Company for steam delivered by respondent? A. Yes. Sheet 26 of Exhibit 6 shows the credits taken by Edison Light & Power Company for steam

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delivered to the York Steam Heating Company and credited to the account entitled "Duplicate Production Expense Transferred" for the period from January 1, 1931, to June 30, 1936. Now, in the upper portion of Sheet 26, no amounts are shown for the year 1936. That, owing to the reclassification, owing to a change in the reclassification of the accounts, this item is now being credited to Account 364.

Q. You mean, a reclassification of the accounts by the Commission or by the company? A. By the company. The company now credits these amounts, the former amounts, to Account 364 and not to the account reflected on page 26.

Q. Account 364 appears on Sheet 1? A. It appears on Sheet 1 and I think it is also on Sheet 12—also on Sheet 12.

Q. That would be the monthly details on Sheet No. 12? A. That's right.

Q. Do other items appear on respondent's books as credits to the cost of production and purchase of electricity? A. Yes. All of the energy requirements of York Railways Company are supplied by respondent. The energy is first purchased by respondent and charged to Account 413, "Electricity Purchased", the cost being reflected on Sheet 20 of Exhibit No. 6.

Q. How is the York Railways Company charged? A. Well, as energy is delivered to York Railways Company, that company is charged and the account entitled "Duplicate Production Expense Transferred" is credited.

In other words, the amounts received from the York Railways Company and also from the York Steam Heating Company up to the end of 1935, were credited to this account. Beginning in 1936, the credit for steam was made to Account 364 and the credit for electricity was allowed to remain in the "Duplicate Production Expense" account.

Q. Have you prepared a schedule of the amounts charged to York Railways during the period from January, 1931 to June, 1936, as shown by the respondent's books? A. I have. These charges are reflected by Sheet 27 of Exhibit No. 6.



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Q. And what rate did the respondent charge the York Railways for this energy during that period? (No answer.)

By the Commissioner:

Q. The amount of kilowatt hours is shown on the next sheet? A. The dollars are shown on Sheet 27 and the kilowatt hours are shown on Sheet 28.

In answer to your question, Mr. Miller, the York Railways Company was charged nine mills per kilowatt hour.

By Mr. Miller:

Q. What is covered by Sheet No. 27 in addition to that credit for electricity delivered to York Railways by Power Company? A. Sheet No. 27, showing the dollar amounts, and Sheet 28, showing the kilowatt hours have been broken down in three ways: the first section on Sheet 27, lines 1 to 13, shows the dollars received from the York Railways Company for power. The second section, lines 14 to 26, shows the amounts received from the York Railways Company for light; and the third section represents the amount of dollars, representing electricity used by respondent in its own operations. That's on line 27.

By the Commissioner:

Q. You add the three together to get the grand total? A. Adding the three together, we get the total for each period of the credits to "Duplicate Production Expense Transferred for Electricity."

By Mr. Miller:

Q. In your opinion, has the respondent properly credited to operating expenses the amounts received from York Railways Company for electric energy? A. I believe the amounts received from York Railways Company for electric energy

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should be credited to an operating revenue account: 308, Metered Sales to Affiliated Railway Utilities.

Q. Is that a Public Service Commission account number or a company account number? A. The Public Service Commission. Now, I say that for the reason, partly for the reason, that the electric company, the Edison Light & Power Company has a tariff on file providing for the sale of electricity to the York Railways Company, and a rate of nine mills is specified in that tariff. In other words, the revenue account—

By the Commissioner:

Q. So I can understand that, under these contracts, under which this company buys most of the power which it gets, the large bulk of the power which it gets at wholesale from other companies, what is the rate per kilowatt hour which it pays? A. In 1936 so far I believe the overall cost was 7.8 mills.

Q. And it sells a large part of that to the York Railways at nine mills? A. Well, it is a substantial part of it. It is not a large part when you consider the total operation.

Q. But they sell a part of it to the York Railways Company at nine mills, is that right? A. That's right.

By Mr. Miller:

Q. Have you summarized the various sheets of Exhibit No. 6 to show the total cost of generating and purchasing energy during the period covered by the exhibit? A. Yes; I have. Sheet No. 29 summarizes the cost of production and generation of electricity as reflected by respondent's books for the five and one-half years ended June 30, 1936. On this statement I have also included the first six months of 1935. It also shows the total kilowatt hour requirements and the extent of purchase and generating electricity in meeting these requirements.

Q. That will cover the production. Have you prepared a statement of the transmission system expenses? A. I have.

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(Paper entitled "Transmission System Expenses for the Six Months Ended June 30, 1936" marked Commission's Exhibit No. 9.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 9, consisting of one sheet, and ask you if that is the statement referred to. A. It is.

Q. Why does not Exhibit 9 cover the period from 1931 to 1935, inclusive? I note that it says "Transmission System Expenses for the Six Months Ended June 30, 1936." A. Prior to 1936, these expenses were charged in the distribution department expenses.

Q. Have you prepared a statement of the distribution system expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled "Distribution System Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 10.)

By Mr. Miller:

Q. I show you paper marked Commission's Exhibit No. 10 and ask you if that is the statement to which you refer? A. It is.

Q. Then, this statement is a summary of the distribution system expenses as shown by the books? A. That's right.

Q. Regardless of the account? A. Yes; for each of the accounts for the years shown on this summary.

Q. The account numbers appear at the left of the exhibit? A. That's right.

Q. Have you prepared detailed statements showing the monthly expenses for each Public Service Commission account indicated in Column "c" of Exhibit No. 10? A. I have pre-

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pared detailed statements, but they have not been completed yet—I mean they are in course of preparation.

Q. Do you desire to explain at this time, prior to the submission of the detailed statements, any of the items shown by Exhibit No. 10? A. The only item I wish to comment upon at this time is the one appearing on line 2 opposite Edison Account 331-A—that should be 331.1-A—“Superintendence—Altoona.” Now, that is the same kind of charge that appeared on the production system of account and disappeared after August 31, 1933.

Q. What comment have you to make on that item as to a provision therefor in the future? A. Of course, since the expense is no longer being incurred, no provision should be made for this allowance in computing the revenues to which the company is entitled.

Q. Have you any comment on the remaining items? A. Not at this time.

Q. Have you prepared a statement of Utilization System Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled “Utilization System Expenses for the Period from January 1, 1931 to June 30, 1936” marked Commission’s Exhibit No. 11.)

By Mr. Miller:

Q. Is Exhibit No. 11 a summary of the utilization system expenses, as shown by the books of the respondent? A. It is.

Q. Do you desire to comment on the utilization system expenses at this time? A. No; not at this time, for the reason that our detailed analysis has not yet been completed.

Q. Have you prepared a statement of the Commercial Department Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

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(Paper entitled "Commercial Department Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 12.)

By Mr. Miller:

Q. I show you paper marked Commission's Exhibit No. 12 and ask you if that is the statement you referred to? A. It is.

Q. What is the nature of that statement? A. It is a summary of the Commercial Department Expenses for the period from January 1, 1931 to June 30, 1936, as shown by the books.

Q. Do you have any comment to make at this time upon the various items shown in Exhibit No. 12? A. Not now; no, sir.

Q. Have you prepared a statement of New Business Department expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled "New Business Department Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 13.)

By the Commissioner:

Q. That "Superintendence—Altoona" seems to be a good, growing boy on that last one, does it not? A. That isn't all Altoona superintendence.

Q. That also includes general labor? A. General labor and Altoona superintendence. The reason that some of these items are bracketted is due to the fact that for the first three years shown, '31 to '33, certain expenses were allocated among the various companies on a revenue basis, and we expect, if you think it is necessary, to give the details of the allocation later on.

Q. All right.



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By Mr. Miller:

Q. Will you examine sheet marked Commission's Exhibit No. 13? Is that the statement of New Business Expenses to which you referred? A. Yes; it is.

Q. And is it self-explanatory? A. I think so.

Q. Do you desire to make any comment on it at this time?

A. No; not at this time.

Q. Have you prepared a statement of the General Administrative Expenses and Other General Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper, consisting of two sheets, entitled "General Administrative Expenses for the period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 14.)

By Mr. Miller:

Q. I will ask you to examine the paper marked Commission's Exhibit No. 14 and state if those are the statements referred to? A. They are.

Q. Do these statements include charges for taxes or depreciation? A. They do not.

Q. Have you prepared detailed statements showing the monthly charges for each Public Service Commission account indicated by Column (c)? A. I have prepared some detailed statements but our analysis work has not been finished yet.

Q. Do you consider that a detailed analysis of those accounts is essential to a proper consideration of this exhibit by the Commission? A. Well, I haven't come to any conclusion on that score yet. Our analysis work is proceeding all the time and a lot depends on what we find in the various expenses.

Q. Pending your detailed analysis, do you desire to comment on the expenses covered by Exhibit No. 14 at this time?

A. I do not.

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Q. Have you prepared a statement of the non-operating income? A. I have prepared a statement of the non-operating revenues for the five and one-half year period.

(Paper entitled "Non Operating Revenues for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 15.)

By Mr. Miller:

Q. That is the five and a half year period ending June 30, 1936, I presume? A. That's right.

Q. As all your statements have? A. That's right.

Q. I show you paper marked Commission's Exhibit No. 15, and ask you if that is the statement referred to? A. Yes; it is.

Q. Have you prepared a statement of the non-operating expenses for the same period? A. I have.

(Paper entitled "Non Operating Expenses excluding Taxes for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 16.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 16 and ask you if that is the statement referred to? A. It is.

Q. Is that a complete statement of the non-operating expenses for the period indicated? A. It is complete, except for the item of "Taxes," which I have left out. The taxes will be separately considered.

Q. Now, referring to Exhibit 15, do you consider that the non-operating revenues reflected thereon, represent earnings from respondent's operations? A. I do for the items of Merchandise Sales Account No. 600, Jobbing Work Revenue, Account No. 601, and Rent from Lease of Other Properties, Account No. 603—those three accounts, and I would consider

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those items to represent income available for return on the property.

Q. Why would you exclude the remainder of the non-operating revenues from the amount available for return? A. For the reason that the interest received, as dividends, and the various small items—some of the small items here represent income received from investments on property values which are not or will not be included in the rate base.

Q. Now, what non-operating expense items, if any, shown on Exhibit No. 16, do you consider should be classified as operating charges? A. Merchandise Sales Expense, Account No. 650; Jobbing Work Expense, Account No. 651; Lease of Other Properties Expense, Account No. 653; and Uncollectible Non-Operating Revenues, Account No. 659.

Q. Would you include as an expense or as expenses all uncollectible non-operating revenues? A. No; only the portion representing the uncollectible non-operating revenues that were included in the income available for return.

Q. Have you estimated the company's annual tax liability? A. Before we get on that, I would like to say with reference to Exhibit 15; if any of those revenue items, or if it develops that any of those revenue items, those items of revenue were received from property and will not be included in the rate base later on, then I would not include those items in the income available for return. Now, that will apply particularly to the item Rent from Lease of Other Properties. It depends on whether or not the property is in the rate base.

Q. Have you estimated the company's annual tax liability? A. No; I have not.

Q. Why not? A. Because five major kinds of taxes depend upon the amount of revenues which respondent receives. The Commission will determine the proper allowable revenues in disposing of this case, so I was unable to estimate the tax liability for those five kinds of taxes.

*R. A. McShea, Jr.—For Complainant—Direct*

Q. Will you state what the taxes are? A. Federal Income Tax, State Income Tax, State Gross Receipts Tax, Local Gross Receipts Tax and Federal 3% Tax on Electrical Energy.

By the Commissioner:

Q. Is that all there are so far? A. Those are the items that are referred to as being undetermined until we know what the company's earnings are.

By Mr. Miller:

Q. What are the Federal Income Tax rates as specified in the Revenue Act of 1936? A. The Federal Income Tax rates are as follows:

First \$ 2,000 of Taxable Net Income at 8%.

Next 13,000 of Taxable Net Income at 11%.

Next 25,000 of Taxable Net Income at 13%.

Over 40,000 of Taxable Net Income at 15%.

Q. Are those rates applicable to a company such as the respondent? A. Yes.

By the Commissioner:

Q. They are the 1936 rates? A. They are the 1936 rates.

By Mr. Miller:

Q. With reference to the State Income Tax for 1936 for a company of this character, what are they? A. The State Income Tax is levied at the rate of ten per cent of the net income.

Q. Is the State Income Tax a permanent tax or purely a temporary tax?

Mr. LaBrum: Just a minute. Nobody knows whether that is going to be permanent or not. We hope not. The witness cannot very well answer the question, therefore, except that the tax act says, "It shall be."

*R. A. McShea, Jr.—For Complainant—Direct*

The Witness: The act at the present time, as it is now written, is for a period of two years; for a corporation such as the respondent, which file tax returns on a calendar year basis, the effective years will be the calendar years 1935 and 1936. In 1935 the rate was six per cent, whereas in 1936 the tax rate is ten per cent.

By Mr. Miller:

Q. What were the State Gross Receipts Tax rates in the years 1935 and 1936, and what will the rate be in 1937?

The Commissioner: Just a minute. Can this witness tell what the rate will be in 1937?

The Witness: Well, I know under the present laws what the rates will be.

Mr. Miller: Under the present laws, Mr. Commissioner.

The Commissioner: All right.

The Witness: Up to 1935, the rate was eight mills. From January 1, 1935 to June 30, 1936, the rate was fourteen mills. For the last six months of 1936, the rate is twenty mills. Beginning in January, 1937, the rate will again be back to eight mills, unless the twenty-mill tax or the fourteen-mill tax or some other tax is substituted therefor.

Q. What is the local gross receipts tax? A. The rate is three per cent on the gross revenues received from consumers within the corporate limits of the City of York.

Q. And what did that amount to in 1934 and 1935? A. In 1934, it was \$32,142 and in 1935, it was \$31,999.

Q. What is the rate and basis of the Federal tax on electrical energy? A. This tax is imposed upon electrical energy sold for domestic or commercial consumption not for resale, at the rate of three per cent of the revenues received from such sales.



*R. A. McShea, Jr.—For Complainant—Direct*

Q. What other taxes does respondent pay, as reflected on its books? A. Federal Capital Stock Tax at the present rate of \$1.00 per \$1,000 of the declared value of the capital stock. The company estimates the liability for this tax for the six months ended June 30, 1936 at \$3,306, or at the rate of \$6,612 per annum.

A state capital stock tax is also paid. This tax is at the rate of 5 mills on the value of the capital stock as computed by the Pennsylvania Department of Revenue. The company recorded a liability of \$33,000 for 1934, \$32,600 for 1935 and \$16,500 for the first six months of 1936.

Q. Are there any other taxes? A. In addition, there are a few odds and ends which, in 1934, amounted to \$1,736 and in 1935, they amounted to \$1,583.

Mr. Miller: Mr. Commissioner, at this time I would like to withdraw Mr. McShea unless Mr. LaBrum wants to cross-examine him on his testimony so far.

The Commissioner: Mr. LaBrum, naturally, wants to have an opportunity to examine all these exhibits.

Mr. LaBrum: Absolutely; yes, sir.

Mr. Miller: My thought is that Mr. McShea is not prepared to comment on the operating and other items until the detailed analysis has been completed.

Mr. LaBrum: All I want understood is that these reports and records are as shown by the books without any adjustments.

Mr. Miller: That is correct.

The Commissioner: It is understood that Mr. McShea will step down at this time and be recalled for further examination later on.

Mr. Miller: I think, however, Mr. Commissioner, that Mr. LaBrum should go over Mr. McShea's testimony so far and be prepared to cross-examine him on it when we have completed Mr. McShea's direct testimony.

*H. Root Palmer—For Complainant—Direct*

Mr. LaBrum: Oh, yes; sure.

Mr. Miller: Mr. Commissioner, I will now offer in evidence Commission's Exhibits Nos. 1 to 16, inclusive.

The Commissioner: They will be admitted into the record with the understanding that those purporting to be copies of agreements and papers of that nature are being admitted to the record subject to the opportunity to be given to the respondent for examination and correction, if necessary, at the later hearing.

Mr. Miller: That will be perfectly satisfactory, Mr. Commissioner.

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H. ROOT PALMER, having been duly sworn, was examined and testified as follows:

By Mr. Miller:

Q. What is your full name, Mr. Palmer? A. H. Root Palmer.

Q. By whom are you employed and in what capacity? A. electrical engineer, the Public Service Commission of the Commonwealth of Pennsylvania.

Q. Will you briefly outline your experience in the management and operation of electric companies? A. I have been identified with the electrical industry continuously since 1894. Starting as an arc lamp trimmer, I was fireman, operating engineer, wireman, lineman, trouble inspector, line foreman, superintendent of distribution of overhead and underground systems, general superintendent, and vice president and general manager.

Q. With what companies have you been associated in electrical business? A. For the first few years with the electric company at Morristown, New Jersey; going to Norfolk, Virginia, as foreman of the gas company, which also operated an

*H. Root Palmer—For Complainant—Direct*

electric plant, and through mergers of electric light and railway I progressed to superintendent. Later, following mergers of companies in Norfolk and Richmond, Virginia, I became general superintendent of light and power.

About January 1, 1919, I became vice president and general manager of the Harrisburg Light & Power Company. This last company operated also a steam heating system.

Q. How long did you remain in that position? A. Until 1926, I think—about '26 or '27.

Q. And now, during your connection with these companies, which you have mentioned, will you state if any construction was performed under your direction? A. It was. I was in responsible charge of the planning, designing, purchasing, construction of a new turbo generating station in Norfolk and also in Richmond, Virginia, and a 115,000 volt transmission line connecting these two cities; of extensions, additions and rebuilding of steam, electric and hydro plants. I also acted in an advisory capacity in connection with a new turbo generating station and transmission system in Lexington, Kentucky.

Q. Are you a member of any engineering societies in Pennsylvania? A. I am, and I am a registered professional engineer in Pennsylvania.

Mr. Miller: I propose, Mr. Commissioner, to have Mr. Palmer testify as to an investigation made by him to determine the portions of the plant of the respondent company applicable to the supply of electric energy, and applicable to the supply of steam, and the segregation made by him of the various portions of the plant to various uses; also, the property used and useful in the public service.

Cross-examine as to qualifications.

(Cross-examination as to witness' qualifications waived.)

*H. Root Palmer—For Complainant—Direct*

By Mr. Miller:

Q. Have you, Mr. Palmer, made an investigation of the steam station and other facilities of the Edison Light & Power Company, located in the City of York, in connection with this case? A. I have.

Q. When did you make that investigation? A. September 1, 2 and 10, and October 8, 1936.

Q. What was the reason for your inspection? A. I was instructed to make an investigation of the steam generating station for the purpose of determining the facilities therein used and useful to the Light Company in supplying electric service.

Q. Did your inspection include the land on which these facilities were located and the disposition made as to its use?

A. It did. Measurements of the property were made which were later checked with blue-prints of the company, the discrepancy being so small that the company's measures were used as the basis of the allocation.

Q. Have you prepared a sketch showing the result of your inspection and study of the item of land? A. I have.

(Paper entitled "Summary of reproduction cost estimate as of June 30, 1934. From Page 32 of report No. 3054—Day & Zimmermann, Inc." marked Commission's Exhibit No. 17.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 17—

The Commissioner: Just a moment.

By the Commissioner:

Q. Does this company manufacture gas? A. The York Company?

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Q. Yes. A. Not in connection with the steam generating plant.

By Mr. Miller:

Q. Before we go into that, I show you sheet marked Commission's Exhibit No. 17, and ask you what that represents.

A. Exhibit 17 is a summary of the reproduction cost estimate, taken from page 32 of the Day & Zimmermann, Inc., report No. 3054 of the property of the Edison Light & Power Company as of June 30, 1934.

The estimated cost of reproduction new and less depreciation are the values that are shown in the report referred to, and no study has been made as to the reasonableness of the direct costs nor of the depreciation applied.

Q. This segregation of the various classifications (indicating), is that yours or is that in accordance with the total reproduction cost estimate of Day & Zimmermann? A. Yes, sir.

Q. And the various amounts are those arrived at by Day & Zimmermann? A. Yes, sir.

By the Commissioner:

Q. The grouping of these items under these various headings, "Steam Generating System, Transmission System" and so forth, is that yours or the grouping of Day & Zimmermann?

A. Day & Zimmermann.

Mr. Miller: These figures, Mr. Commissioner, were taken without any adjustment from the Day & Zimmermann report.

The Commissioner: The grouping is exactly the same?

Mr. Miller: That's correct, and of course this exhibit only deals directly with costs.

The Witness: The steam generating group of accounts, No. 204 to Account 215, inclusive, estimated cost



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of reproduction new, \$1,348,440; less depreciation, \$1,195,660.

By Mr. Miller:

Q. Mr. Palmer, I don't think that it is necessary to read those amounts into the record. The exhibit speaks for itself pretty much, does it not? A. It does.

(Paper consisting of sixteen sheets, entitled "General Plan of Property Steam Station Edison Lt. & Pr. Co., York, Pa." marked Commission's Exhibit No. 18.)

By Mr. Miller:

Q. I show you a group of sheets marked Commission's Exhibit No. 18, and ask you what that is. If Mr. LaBrum will permit a leading question: Does that exhibit show the results of your segregation and study? A. It does—the details.

Q. Now, turn to the first sheet of that exhibit. What does that represent? A. The first sheet is a general outline of the property, not prepared to scale, showing the various divisions and the use of those divisions of property as indicated on the general sketch. Schedule No. 1 shows the—

Q. That is the second sheet of the exhibit, is it not? A. It is—the division of the property as shown on the general schedule, with the square feet area shown, and the allocation as between electric and steam, giving the per cent of allocation, and the amount based upon the estimated reproduction cost in the Day & Zimmermann report.

Q. In other words, you have segregated the property according to your observations on the ground and you have allocated the cost figures, the direct cost figures of the Day & Zimmermann report applicable to those properties in accordance with your allocation resulting from your observations, is that correct? A. Yes, sir, using the area of the property as shown in the reproduction cost estimate.

*H. Root Palmer—For Complainant—Direct*

Q. Now, do you follow that ~~same~~ method for the buildings on the land? A. Yes, sir.

Q. And is the result, obtained along the same lines, shown in Schedule No. 2? A. It is shown on Sheet 2, the total of the buildings. The total allocation of the land is shown on Sheet 1.

Q. Well, now, Mr. Palmer, I was talking about Schedule No. 2. Does Schedule No. 2 show an allocation of the Day & Zimmermann figures? A. It does.

Q. But the allocation on Schedule 2 does not relate to buildings, you mean? A. Schedule No. 2, the allocation, is on buildings.

Q. And in Schedule 1, the allocation is on land, is that right? A. On land; yes, sir.

Q. This Sheet No. 1, which is the fourth sheet of the exhibit, represents what? A. A tabulated summary of the allocations, which are shown diagrammatically on Schedule 1.

By the Commissioner:

Q. Of the land? A. The land.

By Mr. Miller:

Q. Now, turning to Sheet 2, Mr. Palmer, what is Sheet 2? A. It shows a tabulation of the allocation as shown diagrammatically of the buildings on Schedule 2. It shows the total cost, the estimated cost of the buildings and the allocation as between the electricity and steam use.

Now, do you desire to comment upon the two further? A. The item of \$23,565 for old boiler room building is used jointly by the steam and electric companies as repair and storage for boiler plant and some transformers for the electric company. The steam company requires such facilities in operating the boiler plant while the use by the electric company is of a temporary nature for the equipment stored. However, in allocation of 25% for electric and 75% for the steam company use has been applied as reasonable.

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The item of \$360 for railroad siding is of use by both electric and steam companies, therefore an allocation of 50% to each has been applied as reasonable.

Q. Now, referring to Sheet 3, what does that show? A. A summary of the items contained in the estimated reproduction cost, Classification Account 209 Boiler Plant Equipment, the property being allocated between steam and electric, the allocation having been made in the item of Exhaust—Heaters, Atmospheric and Piping on a fifty per cent basis to each. The piping is used jointly by both the steam and the electric, and the amount of piping required for the operation of either one independently would be not less than and would probably exceed one-half of the appraised cost. Therefore, a fifty per cent valuation has been applied as reasonable.

Q. You mean, allocation I take it? A. A fifty per cent allocation.

Q. The totals shown on Sheet No. 3 and I believe this is also true of the other sheets, compare with the Day & Zimmermann appraisal totals, do they not? A. They do. They compare with the totals in Exhibit 17.

Q. However, the allocation is your own allocation? A. It is.

By the Commissioner:

Q. That is, the allocation as made between the electric and the steam? A. Yes, sir.

Q. The current details are, however, those in the Day & Zimmermann report? A. They are.

By Mr. Miller:

Q. Now, is Sheet 4 self-explanatory or do you desire to explain that? (No answer.)

Mr. Miller: The statements that Mr. Palmer began to make with reference to these sheets, I think it would

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save time without reading them. They will be submitted to the respondent for cross-examination in any case.

By Mr. Miller:

Q. Do you have any—

(Discussion off the record.)

By Mr. Miller:

Q. All of this property, which is involved in these allocations, is owned, is it not, by the Electric Company? A. It is included in the reproduction cost new by Day & Zimmermann as the Edison Light & Power Company's property.

Q. So far as you know, the Edison Light & Power Company, the respondent, owns this property? A. It does.

Q. And holds title to it? A. Yes.

Q. And your segregation is based on use and not ownership? A. It is.

Q. Now, do you desire to add anything to the comments appearing on Sheet 4? A. No, sir; that's self-explanatory.

Q. Sheet 5? A. No, sir.


Q. And on Sheet 6, is there any additional explanation you desire to make? A. No, sir; not at this time.

Q. Well, now, on Sheet 6, there is an electrical generator, which is listed at \$18,844. Is that used and useful in the Electric Company's business? A. That item is a generator in connection with the engine on Sheet 4, and it is connected with the engine as indicated on Sheet 4.

Q. Well, now, do you mean there is a duplication in the Day & Zimmermann figures with reference to this generator? A. No, sir.

Q. The generator appears only once, is that right? A. The engine appears on Sheet 4 and the generator on Sheet 6. That is a combined unit, engine and generator, and under the Commission's uniform classification of accounts, the engine and the generator are separated.

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Well, now, you state that the generator, as distinguished from the engine, has been out of use for years. Where did you obtain that information? A. From the operating records of the company, which show that no current has been generated by that engine.

Q. Could you determine from an examination of that generator whether it had been used recently or not? A. No, sir.

Q. Do you mean you could not determine that it had been used? Could you determine whether it had been used recently or not? A. No; only from the records, that there had been no current generated by it.

Q. The engine was not in use, was it? A. No.

Q. Neither the generator nor the engine was in use when you observed them? A. No, sir. This is a complete unit, Mr. Miller, and the generator is on the same shaft with the fly-wheel of the engine. It is a complete unit. You can't operate one without the other.

Q. Well, if the generator has been out of use for years, the engine must have been out of use for years, is that right? A. I state there on that footnote, on Sheet 4—

Q. Will you just answer the question? (No answer.)

Mr. Miller: Will you read the question?

(Question read.)

The Witness: It was.

By Mr. Miller:

Q. Now, turning to Sheet 7, Mr. Palmer, have you any comment in addition to that which appears on that sheet? A. No, sir.

Q. On Sheet 8, I note that there is no portion of all that equipment allocated to the electric company. A. There is not.

Q. Now, did you base that one hundred per cent allocation to the steam company upon your observation or upon information given to you by the company, or both? A. From the char-

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acter of the equipment and observation—principally from the character of the equipment. It is used in connection with handling fuel for the boilers.

Q. Do you have any comment, in addition to that appearing on Sheet 9? A. No, sir.

Q. I notice various numbers appearing on these sheets—No. 215 on Sheet 9, No. 214 on Sheet 8, "Other Power Plant Equipment" and "Coal Storage & Weighting Equipment", respectively. Are those Day & Zimmermann numbers or the respondent's account numbers, or Commission numbers? A. Commission account numbers for the classification of property.

Q. Those are Commission account numbers? A. For electric companies; yes, sir.

Q. Now, what is shown on Sheet 10? A. A summary of the allocations as shown on Sheets 1 to 9, inclusive, with the Commission's account numbers, the items, the per cent of allocation to electric company and per cent allocated to steam company, with the proportion of the estimated cost.

Q. Now, what is shown by Sheet 11? A. Those costs on Sheet 10 are for structural costs only.

Sheet 11 is a condensed summary of the tabulation on Sheet 10, with the percentages omitted, the total reproduction cost of the steam generating system group as shown in the Day & Zimmermann appraisal, the total allocated to the electric company and the total allocated to the steam heat company. Those costs are direct costs only.

Q. Now, are Sheets 12 to 16, inclusive, self-explanatory? A. Sheet 12 is a condensed summary of the estimated cost of reproduction new and less depreciation, as shown in the steam generating group. Accounts 204 to 215, inclusive, after giving effect to the allocated segregation as shown on Sheets Nos. 1 to 9, inclusive, and as summarized on Sheets 10 and 11.

The depreciation as applied and shown on Sheet 12 is the same ratio between the estimated cost of reproduction new

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and less accrued depreciation as applied and shown on Sheet No. 10.

Q. Is Sheet 13 self-explanatory? A. Sheet 13 is a detailed summary of the property included in the steam generating system group, Accounts 210 and 212, Exhibit No. 1 or Exhibit 17, and is shown in detail, with description and value, on Sheets Nos. 4 and 6 of Exhibit No. 18, of the facilities not used or useful in rendering electric service by the Edison Light & Power Company, amounting to \$55,118 on Sheet 4 and \$18,844 on Sheet 6, a total appraised value, on the basis of direct costs, of \$73,962.

Q. What is shown on Sheet 14? A. Sheet 14 is a detailed summary of the property included in steam generating system group accounts No. 204 to 215, inclusive, as shown on Sheet No. 12, excluding the property not used or useful as shown on Sheet No. 13, amounting to a total for this group of \$767,361 new and \$664,907 less depreciation.

Q. What is shown on Sheet 15? A. Sheet 15 is a detailed summary of the property of the steam generating system group, Accounts 212 and 213, as shown in detail on Sheets Nos. 6 and 7, with a description and value of the facilities used exclusively for York Railways Company service, amounting to \$64,951 on Sheet No. 6 and \$19,790 on Sheet No. 7, a total appraised value, on the basis of direct costs, of \$84,651.

Q. And on Sheet 16, what is shown? A. Sheet No. 16 is a detailed summary of the property included in the steam generating system group, Accounts 204 to 215, inclusive, as shown on Sheet No. 14, excluding the property used exclusively for York Railways Company service, amounting to \$682,710 new and \$594,750 less depreciation.

Q. Now, Mr. Palmer, I can understand why you set up a tabulation in 214 eliminating \$73,962 worth of property not used or useful in rendering electric service, but will you explain why you eliminated the property used exclusively for York Railways service? Why do you set up Sheet 15, showing

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\$84,651, being the cost figures applicable to property used solely for York Railways Company service and why did you eliminate that amount on Sheet 16? A. That was for the purpose of showing the difference between the actual cost of purchased energy and the price at which energy was charged to the Railways Company.

By the Commissioner:

Q. I don't understand— A. We have another exhibit in which that will be used.

• Q. I know, but the point is, you set up a figure on Sheet 12 of \$841,000, then show that property not used and useful to the extent of \$73,000; is that right? A. Yes, sir.

Q. And you deduct that from the 841,000? A. Yes, sir.

Q. And you get, on Page 14, \$767,000, and then you have another figure of 84,000 of property used exclusively by York Railways, and then you deduct the 84,000 from the 767,000; is that right? A. Yes, sir.

Q. Mr. Miller's question was: Why did you deduct that?

A. To get a comparison of the cost of the purchased current—the total cost of the purchased current to the Light Company.

Q. The point I am trying to get in my mind is this: Not why you are comparing it but why you deduct it. In your opinion, is that part of the property used and useful by the Edison Light & Power Company properly considered in a rate base? A. This is property used and useful exclusively for the Railways Company—one company.

Q. I am talking about that used in the Edison Light & Power set-up, that \$84,000. Do you think that is proper? Why do you deduct it? A. Under the present rate to the Railways Company for power, the losses are absorbed by the Light Company.

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By Mr. Miller:

Mr. Commissioner, I think it is relevant to make this segregation for the reason—

The Commissioner: I did not think it was not relevant. I thought you were going one step further away. Is that the only reason you deduct it, to make that comparison?

Mr. Miller: Yes. We prepared it in this manner so it would show all property allocable to the York Railways Company's use, and the purpose being to examine the rate charged the York Railways on the basis of property properly allocable to their use.

Now, ordinarily, it is impossible to segregate the property of an electric company and say, "This is used exclusively for one consumer"—that would not be possible, but in this case we think it ought to be done in order to present the proper picture to the Commission.

The Commissioner: I understand that, but what I am trying to find out for my own information: Granting that this \$84,000 worth of property is used for York Railways electric service, it still belongs in the rate base of the Edison Light & Power Company, does it not?

Mr. Miller: That is true, but not necessarily.

The Commissioner: That is what I was trying to find out.

Mr. Miller: Mr. Commissioner, we are simply putting in this exhibit to show that a certain portion of the property would be allocated definitely to the York Railways Company and a certain portion to the domestic and other service of the company.

The Commissioner: I understand that, but certainly that \$84,000 worth of property is used in the production and distribution of electricity, is it not?

Mr. Miller: That's right; yes, sir.



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The Commissioner: And the Edison Light & Power is the producer and the transformer of that power, and it is their business to furnish power, and it is used in the set-up of the Edison Light?

Mr. Miller: That is correct; yes, sir.

(Paper, consisting of two sheets, entitled "C-11108—Cost of Purchased Energy--Adjusted" marked Commissioner's Exhibit 19.)

By Mr. Miller:

Q. I show you Commissioner's Exhibit 19, and ask you what that shows? A. That is a statement of the cost of purchased power by the Edison Light & Power Company, the credits to purchased power transferred to the York Railways for power, to the York Railways for light, and respondent's own use, with the net charge for purchased power.

By the Commissioner:

Q. When you say "credit York Railways—power, York Railways—light, and respondent's use", the respondent buys it all and sells to the York Railways for light and power, does it not? A. It credits the purchased power for the amount used.

Q. But, technically, it sells it to the York Railways for light and power just as it sells it to the other customers of the Edison Light, does it not? A. That is handled as a credit.

Q. Whether it gets paid cash or whether it gets a credit, it amounts to the same thing, actually? A. Yes. Sheet No. 2 shows the total purchases of power for the years 1931 to 1935, inclusive, the total number of kilowatt hours purchased by the Edison for the five years, 1931 to '35, and the average cost per k.w. hour to the Edison Light & Power Company for purchased power for those five years.

Line 4 on Sheet 2 shows the number of kilowatt hours supplied to the York Railways Company for power, and Line

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5 shows the total amount of credit or charge against the purchased power for those number of kilowatt hours at the average cost per kilowatt hour.

By the Commissioner:

Q. That is, supplied to the York Railways Company? A. Yes, sir. Now, referring to Sheet 1, the next charge is the amount shown on the company's records for purchased power. Putting the Railways power purchases and sales back into it, the purchase of \$65,973 in 1931 with the \$528,922.56 make the total cost of the power to the Edison Light Company of \$594,895.89. Deducting from that the purchase price of Railways power, as shown on Line 5 at the bottom of Sheet 2, of \$67,637.96, it shows the net charge adjusted of \$527,257.93.

Q. Now, excuse me. Let me understand that. You have a figure of \$528,922 net charge? A. As shown in the company's records for 1931.

Q. Now, you add the York Railways power of \$65,900? A. As charged to the Railways.

Q. That is charged to the Railways? A. Charged to the Railways.

Q. \$65,900? A. Yes, sir.

Q. Do you mean that the purchase price by the Edison Light & Power from the companies from which it buys at wholesale is \$67,000? A. As shown on the bottom line of Sheet 2; yes, sir.

Q. Do I understand from that, then, that the purchase price is greater than the amount charged for furnishing it to the York Railways? Is that what you mean? A. That is the result shown by this calculation.

Q. Well, I understood from the previous testimony that the wholesale power was purchased at a little less than eight mills and sold to the York Railways at about nine mills. You heard that testimony? A. I did.

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Q. That would be just the reverse of this picture, would it not? If they buy for practically eight mills and sell it for nine, there is a difference in favor of the Edison Light in that set-up, if that were the fact, isn't that so? A. Yes, sir.

Q. I thought I understood you to say that it would be the reverse of that; would it? A. It would. As I recall the testimony—

Q. I just want to get myself clear as we go along. A. As I recall, that testimony referred to the purchases under the new contract, which is at a lower rate. That is borne out by this Exhibit for 1931, '32 and '33; there was a loss. For 1934 there was a very slight loss, and for 1935 there was a small profit.

Q. I see. That is what I was trying to get in mind.

By Mr. Miller:

Q. Is that situation reflected by the figures in your exhibit, Mr. Palmer? A. Yes, sir.

Mr. Miller: Now, Mr. Commissioner, I would like to defer any further detailed examination on that subject. I would like to put in one more exhibit from Mr. Palmer.

By the Commissioner:

Q. Then, as I understand the picture, according to your analysis Edison Light & Power for the years 1931, '32 and '33, in some appreciable amount, about 200,000, or between 100 and 200,000, bought power at wholesale under some agreements with other companies and sold this particular amount of power to the York Railways for less than what it paid for it? A. It did.

Q. And that situation has now been corrected, in 1935, at least, where there is a difference of a little more than that amount in favor of the Edison Light & Power? A. That's

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right. In addition to those losses is the operating expense and the carrying charges on this equipment—

Q. Yes; that was without any cost to the Edison Light & Power delivering it to the York Railways. A. They are handling it.

Q. That is to say, without any such charges? A. Yes.

Q. That is also reflected in the item for 1935. If you deduct from the \$38,000 charged to the York Railways the proper charges against that amount on the electric company's books, that we have just referred to, then the difference between what it bought the current for and what it sold it for—those charges might disappear, might they not, even in 1935? In other words, if all the charges were included, there might not be any profit at all? A. It would be converted into a loss.

(Paper, consisting of six sheets, entitled "Operating Expenses Generating by Steam Power Years Ended Dec. 31, 1931 to Dec. 31, 1935, incl." marked Commission's Exhibit No. 20.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 20 and ask you what that represents. A. Exhibit No. 20 is a summary of the operating expenses for the steam generating station group for the years 1931 to 1935, classified under the Public Service Commission's system of uniform classification of accounts, showing the total operating expenses for the year, also the amount of credit to operating expenses for steam delivered to the steam heating Company and the net amount of operating expenses after deduction of this credit.

Q. Now, Mr. Palmer, I just want to ask you one question on that exhibit at this time: What is that figure in the 1931 column on the first page, \$36,265.92, net cost? What do you mean by "net cost"? A. That is the total cost of operating the steam generating plant, less the credit for steam delivered

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to the Steam Heating Company. The total cost of operating expenses and maintenance for the plant is \$117,975.76.

Q. Well, then, does that represent a loss on steam generation by the Electric Company? A. That's the difference between the cost of operating the steam plant and the amount received for steam transferred to the Steam Heating Company. The cost of \$117,975.76 includes the expenses in connection with electrical operation and not properly chargeable to steam generation. The details for those years are shown on the following five sheets.

Mr. Miller: I will defer further direct examination on this subject at this time ~~it~~ satisfactory, Mr. Commissioner.

By the Commissioner:

Q. Mr. Palmer, as I understand it, the next five sheets are records showing the difference between the total cost of generation of steam power and the adjusted total of the difference between the second last line and the last line, is that right? A. Yes, sir.

Q. And you have adjusted it to bring it down to that bottom figure and that adjustment for the three years is shown on separate sheets? A. Yes, sir.

By Mr. Miller:

Q. Mr. Palmer, your figures in Exhibit No. 20 were obtained from what source? A. From the company's records.

By the Commissioner:

Q. From the books of the company? A. Yes, sir.

By Mr. Miller:

Q. Are those figures adjusted by you or are they taken directly from the books of the company without adjustment, except for the adjusted totals? (No answer.)



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By the Commissioner:

Q. Except where you say "adjusted totals"? A. By—

Q. Down to the sum of the total figures, of 117, 116, 132, 129, and 139—down to that figure, are all those items taken from the books? A. On the first sheet?

Q. Yes. A. Everything except that last line is taken from the company's records.

Q. Where you say "adjusted total" and you have the adjustments on the separate sheets? A. For the allocation between the electric and the steam and the transmission and the total cost on those individual sheets checked with the totals on Sheet 1.

By Mr. Miller:

Q. Now, just one question, Mr. Palmer, in connection with this Exhibit No. 20: You indicate there the net cost figures that the company sustained and lost in the generation of steam power for this affiliate steam heating company in each of the years, 1931 to 1935, inclusive? A. Yes, sir.

Mr. Miller: That is all at this time.

(The sitting Commissioner here announced that the next hearing in this matter would be held on November 18 and 19, 1936, at Harrisburg, starting at 9:30 o'clock A.M.)

*Colloquy*

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Wednesday, November 18, 1936.

Commissioner STAHLNECKER, Presiding.

A  
APPEARANCES:

S. G. MILLER, Esq., Harrisburg,  
for the Public Service Commission, Complainant;  
V. K. KEESEY, Esq., York, Pa.,  
CHARLES H. ENGLISH, Esq., Erie, Pa., and  
J. HARRY LABRUM, Esq., Philadelphia, Pa.,  
for the Respondent.

The Commissioner: Before we proceed with the testimony of witnesses I would again like to renew the suggestion that I made at the previous hearing, and that is, to ask at this time whether the company is willing to state, or is able to state, what it is contending for in the matter of a rate basis, and the amount of return that it is entitled to, in an effort to shorten this proceeding if possible.

Mr. Miller: The Commission is prepared to give the figure we contend for, if the company cares to make a statement.

Mr. English: Suppose we have the Commission's figure. We are prepared to make a statement.

The Commissioner: We would like to know what the company is contending for if it is in position to state it at this time.

Mr. English: Certainly we are. The company takes the position that in the city of York we are furnishing to the people three related types of service steam, trans-

*Colloquy*

portation and electricity; that in determining the amount which the owners of these properties are entitled to receive for service the picture should be considered in its entirety. On that account we think it is not only the right, but the duty of the Commission to keep constantly in mind in these proceedings the factors to which I have just referred. We say, therefore, that the situation is not adequately met by isolating the property used and useful in rendering one of these particular services, but that all must be considered as a whole.

With that thought in mind we are prepared to show, we think, that the properties devoted to the public service along these lines, considered as a whole, to the extent that they should be considered for rate making purposes by the Commission, will have a value of at least eight and a half million dollars. That, sir, is our position.

The Commissioner: Do I understand from your statement, Mr. English, that your figure of eight and a half million dollars, which you advance in this matter, includes the value not only of the Edison Light and Power Company property, but also the steam heating property, plus the property of the York Railways.

Mr. English: Not in its entirety.

The Commissioner: Well, in part at least.

Mr. English: In part.

The Commissioner: York Railways.

Mr. English: Yes, sir.

That is our position. We think it is the duty of the Commission to keep in mind that we are rendering this service to the people of York.

The Commissioner: So that your position is that the amount of return received by the Edison Electric in this situation, the annual return, should be affected partly by York Railways?

*Colloquy*

Mr. English: To some extent.

The Commissioner: At least to some extent.

Mr. Miller: You mean that the rates of the York Edison Company for electric service should be based upon a rate based on eight and a half million dollars.

Mr. English: The Commission has stated the conclusion too narrowly. We are not contending that the property of the York Edison Company is worth eight and a half million dollars. I tried to make it clear to Your Honor that we take into consideration the factors which we think are material.

The Commissioner: I thought my restating of what you said did not misinterpret your figure.

Mr. English: You stated it better than I did.

The Commissioner: Do I understand that the amount of return that you feel Edison Light and Power should be allowed is affected in whole or in part by the value of some of the facilities of the York Railways Company.

Mr. English: I want you so to understand the situation.

The Commissioner: That is your position?

Mr. English: Yes sir.

Mr. Miller: This proceeding is to determine the reasonableness of the rates paid by the consumers of electricity in York and not by persons who ride the street cars, nor by the consumers of steam, and the theory of the Commission is that the rate base upon which a proper return to the York Edison Company should be calculated is the value, the fair value of the property used and useful in the supply of electricity to the consumers of the York Edison.

Mr. English: As I understood the record Your Honor asked a question. Now, do you want it argued.

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Mr. Miller: I might state, relative to the Commission's figure, we think we can show that the value of the property upon which rates to the consumers of York Edison, the electric consumers of power should be based is approximately \$4,250,000.

The Commissioner: One figure is just twice that of the other apparently.

Mr. English: Before we get through we hope to bring great light even to the mind of counsel of the Commission.

The Commissioner: I confess you will have to bring a great light to my mind.

Mr. English: Even that does not surpass our ambition.

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H. ROOT PALMER, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows:

*Direct Examination*

The Commissioner: At the end of the first day's hearing, Mr. Miller, you had developed through Mr. Palmer one thing, the matter of the purchase of wholesale power by the Edison Light and Power Company, sold by the Edison Light and Power Company to the York Railways. Apparently on the figures that were presented Edison Light and Power Company was buying at wholesale at a certain figure and selling it for some years at least at a less figure to the York Railways, even before adding to its wholesale price the proper cost that would necessarily be put upon it in transmitting that power to York Railways. I would like to have a little more detail, if you can develop that.

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By Mr. Miller:

Q. That appeared on Commission Exhibit No. 19, did it not? A. It did.

Q. Can you explain to the Commissioner in more detail just what that exhibit represents? A. With respect to the sale of energy by the respondent to York Railways Company, it appears from Commission Exhibit No. 19, that for example, in 1931 York Railways took 7,296,436 kilowatt hours of power, for which respondent received the sum of \$65,973.33, which is at an average rate of about 9 mills.

In all, in 1931, respondent purchased 64,818,576 kilowatt hours of electricity for service to its consumers. As in all electrical systems, not all of this quantity of electricity was accounted for, as an appreciable quantity is lost in transformer losses, leakage into the ground and dissipated in other ways. That quantity of electricity purchased by respondent cost \$600,986.48, which is at an average price of about 9.4 mills. Attributing no unaccounted for energy in connection with the sale to York Railways Company, and assuming only, for purposes of discussion, that respondent purchased no more than it sold to the Railways Company, that quantity of 7,296,436 kilowatt hours at the average price of 9.4 mills cost \$67,637.96. Thus it appears that respondent paid over \$67,000 for the current sold to the York Railways Company for something less than \$66,000. Manifestly, this is not a compensatory rate.

By the Commissioner:

Q. Now, that was before allowance for loss in handling, and before any proper charges to Edison Light and Power Company in handling that current, is that right? A. Yes sir. It appears from the study I have made that certain rotary transformers and certain switchboard equipment is used by respondent exclusively for furnishing service to York Railways



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Company. In treating of this property one of two courses may be followed, first, the property may be included in a reproduction cost estimate of property used and useful in the public service by respondent and if the rate for service by such equipment is found to be non-compensatory, the rate itself could be adjusted to bring about such a condition, and second, in view of the treatment of the revenue received from the sale of electricity to York Railways Company, namely, as a credit for the cost of purchased energy, so that such revenue does not appear as revenue to respondent, the property used exclusively for this service can be excluded from a reproduction cost estimate. I have chosen to exclude the property from the estimate. In so doing one arrives at a rate base of at least an estimate cost of property which is used in the public service and attributable to the revenue as received from the general public.

By Mr. Miller:

Q. Now, by rate base, or the estimate of cost of property used in the public service, what public service do you refer to and the rate base upon which rates to consumers should be based? A. Service rendered by the Edison Light and Power Company.

Q. To what consumers? A. Its classes of consumers, commercial, domestic and industrial.

Q. At the last hearing Exhibit No. 20 was discussed by you with reference to the cost of steam generated. In the allocation of that cost do you have any further explanation to make on that exhibit? A. Exhibit No. 20 is a summary of the operating expenses for the steam generating system group for the years 1931 to 1935, inclusive, classified under the Public Service Commission's system of uniform classification of accounts, showing the total operating expenses for the year, also the amount of credit to operating expenses for steam delivered

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to the steam heating company, and the net amount of operating expenses after deduction of this credit.

The net amount for operating expenses for the years 1931 to 1935, inclusive, as shown, has been adjusted to the amounts as shown on the detail sheets for the years as indicated.

Sheets designated 1931 to 1935, inclusive, of Exhibit No. 20 show the total operating expenses of the steam generating system for the years indicated, allocated between steam generation, electric generation and transmission system group, accounts Nos. 415 to 434, inclusive, of the Commission's Uniform Classification of Accounts for electric companies.

The allocations as shown are based on a field inspection of the operating conditions and the relation of expenditures to the various accounts for the conditions observed and corresponding to their separate operating companies.

The allocation to electric generation is based on the segregation of the electric and steam generating property and operations, on the basis that the operating expenses are confined to the turbine operation and auxiliary apparatus, the steam being brought to the turbine room and the electric energy delivered to the switchboard.

The allocation to the transmission system group is based on the segregation of operating expenses as if the steam generation and electric generation were removed and all energy, whether generated at another location or purchased, was brought to the switchboard for control and distribution.

The allocation to the steam generation is based on the segregation of the operating expenses as if the only purpose was for steam heating service independent of any electric generation.

The total operating expenses allocated to steam generation for the total operating expenses taken from the respondent's records and as shown on sheets designated 1931 to 1935, inclusive.

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Q. Well now, in connection with that allocation, will you turn to Exhibit 20 and give me the figure for the allocated cost of steam generated in 1935? A. \$88,805.

Q. And for that steam what did the respondent receive from the Steam Heat Company? A. \$81,709.84.

Q. Then the cost of generating the steam was approximately \$7,000, a little over \$7,000 more than the steam was sold for, according to your figures? A. Yes, sir.

Q. Now, will you take the comparable figure for 1932? A. The allocated cost was \$89,548 for steam generation.

Q. And what amount was received for the sale of such steam? A. A credit of \$88,608.48.

Q. And that is approximately \$1,000 difference, isn't it? A. Yes, sir.

By the Commissioner:

Q. You mean a thousand dollars less? A. A thousand dollars difference, yes, less.

By Mr. Miller:

Q. In 1933 what were the conditions as revealed by your figures? A. An allocated cost of production of \$87,481. and the amount received \$88,934.60.

Q. That represents a loss of how much?

The Commissioner: Not a loss.

The Witness: A gain. A gain of less than \$1,000. \$500 or \$600 gain.

By Mr. Miller:

Q. And what were the conditions as revealed by your exhibit in 1934? A. The allocated cost for steam generation in 1934 was \$98,522, and the credit that was transferred \$96,728.27, a difference of \$1800, approximately, loss.

*H. Root Palmer—For Complainant—Direct*

Q. Will you give me the 1935 figures? A. Allocated expense for steam generation for 1935 \$102,898, and the amount of the steam transferred credit \$98,576.23, a difference of about \$4300 loss.

By the Commissioner:

Q. When you say credit so much, was any amount actually paid off to the Edison Light and Power Company for this steam delivered, cash paid? A. It was treated as a credit to the cost of operating the steam generating plant.

By Mr. Miller:

Q. Mr. Palmer, you eliminated from your testimony as part of a proper rate base the property used in the production of steam. Will you state the basis for that elimination? A. The basis of allocation of accounts 350 to 352 inclusive, 354 and 358 to 373 inclusive, the item of expense—

Q. Mr. Palmer, will you just tell me why you excluded that property? A. The allocation of the property which was used in connection with the generation of steam and the allocation of property used for generating electricity, and the allocation of the expense—

Q. I don't want the allocation, I want the reason for the allocation?

The Commissioner: Why did you eliminate the steam heat plant from this rate base of the Edison Light and Power Company; why is not that a proper part of the rate base, is what we want to know, in your opinion.

The Witness: Primarily it is for steam heating purposes and required for steam heating purposes. The boiler plant, the generation electricity, is in my judgment, incidental, except such electricity as is generated in connection with the steam heat system.

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By the Commissioner:

Q. Is it necessary in the operation of the Edison Light and Power Company to have this generating capacity in the steam heating plant equipment? A. It is not. The entire electrical requirement of the Edison Light and Power Company is purchased, and the generating capacity in this station is inadequate to carry any appreciable amount of the maximum load of the Edison system.

Q. Is Edison Light and Power Company able to buy more electricity if it needed it than it requires now from this source of wholesale power? A. Their contract provides for their entire requirements, unlimited as to amount.

By Mr. Miller:

Q. Now, Mr. Palmer, leaving the steam generating property for a moment and turning to the facilities exclusively for service to the York Railways Company shown on Sheet 15 of Exhibit No. 18, do you desire to make a further explanation of the basis for excluding the property shown on that sheet from your reproduction cost figures? A. The equipment included in the appraisal of the Edison Light and Power Company property shown on Sheets 6 and 7 of Exhibit 18 as facilities used exclusively for York Railways Company's service appraised on the basis of direct cost at \$84,651, exclusive of overhead.

On the basis of 10 percent annual fixed charges to the Edison Light and Power Company would be \$8,465.10, exclusive of overhead.

Mr. English: May I interrupt the witness, Your Honor, to inquire just what exhibit he is referring to?

The Commissioner: Exhibit 18 Sheets 6 and 7, which are then condensed on Sheet 15, as I understand it.

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Mr. English: Thank you, sir.

Mr. Miller: That is correct.

The Commissioner: 6 and 7 are the detailed sheets and Sheet 15 is a condensation, a total arrived at of \$8,465.10.

The Witness: On the basis of the average of .0078 per KWH for purchased power for the first six months of 1936—

By Mr. Miller:

Q. Is that mills, Mr. Palmer? A. 7.8 mills. The spread between the average purchase price and the price transferred to the York Railways Company of .009 mills would be .0012 mills per KWH hour. To reimburse the Edison Light and Power Company for the carrying charges of \$8,465.10 would require an annual use by the York Railways Company of 7,054,250 KWH.

In addition to these carrying charges the Edison Light and Power Company absorbs the operating and maintenance expense and insurance on this equipment.

By the Commissioner:

Q. On this \$84,000 worth of equipment, is that what you are talking about? A. Yes, sir.

Q. Referred to in Exhibit 18? A. Yes, sir.

With the decreasing use by the York Railways Company from 7,296,434 KWH in 1913 to 4,250,970 KWH in 1935 as shown on Sheet No. 2, the amounts of the losses absorbed by the Edison Light and Power Company are increasing.

Q. Now, Mr. Palmer, will you see whether I understand this matter of \$84,000. This \$84,000 covers the transformers, blowers, switchboard panels, instruments and so on, as I understand it which are included in the property of the Edison Light and Power Company, is that correct, from their statement? A. Yes, sir.



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Q. I also understand that you say that this equipment is used exclusively for the York Railways Company's service, is that correct? A. Yes.

Q. Now, I would like to ask you this question: If Edison Light and Power and York Railways were two entirely separate entities, dealing entirely at arms-length, would this equipment be owned and paid for and assumed by the Railways Company or the Edison Light and Power, which would be required to have it? Would the Electric Company dealing at arms-length with Railways Company supply this equipment for the purpose of delivering to the Railways Company energy, or would the Railways Company be required to install this equipment at its own expense to receive that energy from Edison Light and Power Company? A. It would depend upon the rate. If the seller provided facilities it would be reflected in the rate, if the purchaser provided facilities it would be reflected in the rate at a lower rate.

Q. Then your conclusion that it should be excluded from the Edison Light and Power Company valuation of Edison property is that according to your figures, Edison Light and Power Company was selling the current to be used by York Railways to it at less than it cost it, is that right? A. Yes, sir.

Q. And that is based on your judgment that it should be excluded from the Edison Light and Power Company, is that correct? A. That was the conclusion I used in my exhibits on power supplied the York Railways Company.

Q. I mean, I can understand it on that basis, but I thought it was perhaps a little hazy, at least it was to my mind, and I wanted to be sure on what you based your opinion? A. The power supplied the York Railways Company is metered and delivered at the generating station in York, and at the substations located on the outlying lines of the Railways Company.

The power metered and delivered to the Railways Com-

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pany at the generation station in York is 2300 volts alternating current and after delivery to the Railways Company the Edison Light and Power Company provides, maintains and operates the facilities appraised on the basis of direct costs only at \$84,651 to transform and convert the 2300 volt alternating current of the Railways Company to 600 volt direct current suitable for the operation of its cars.

The power supplied to the Railways Company metered and delivered at its outlying sub-stations is 13,200 volt alternating current and the facilities in these sub-stations to transform and convert this alternating current, which has been delivered to Railways Company, to direct current suitable for operation of its street cars is provided, maintained and operated by the Railways Company.

By Mr. Miller:

Q. Now, do you mean that the transformers located at the York Station are supplied by the York Edison Company and the transformers located at the sub-stations are supplied by the Railways Company? A. The transformers at the sub-stations are provided by the Railways Company in connection with their apparatus used for the Railways service on purchased current at the generating station at 2300 volts. Transformers for reducing a portion of the purchased power by Edison Light and Power Company are provided by the Edison Light and Power Company. The other portion of purchased power is purchased at 2300 volts which requires no transformers.

Q. Now, do you have any further explanation to make on Sheet 1 of Exhibit 19? A. Sheet No. 1 of Exhibit No. 19 shows the cost of the power purchased by Edison Light and Power Company for the years 1931 to 1935, inclusive, with a credit for the amount transferred to the York Railways Company for power and for light and respondent's own use with a net charge for purchased power.

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The result of this adjustment shows a difference of \$1,664.63 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company of \$1,664.63.

Q. That is for what year? A. For 1931.

The result of this adjustment for 1932 shows a difference of \$3,259.08 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company.

Q. What was the result for 1933? A. The result of this adjustment for 1933 shows a difference of \$1,357.09 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company.

Q. Now, you said the difference between the sum paid, and I presume the sum received from the York Railways? A. The amount transferred to York Railways Company.

Q. And for 1934? A. The result of this adjustment for 1934 shows a difference of \$319.22—

The Commissioner: Loss or profit.

The Witness: A loss.

By Mr. Miller:

Q. What was the result for 1935? A. It shows a difference of \$3,528.31.

Q. Loss or profit? A. A gain to the Edison Light and Power Company.

Q. What was the reason for that gain, in your opinion? A. That was the result of a reduction in the average rate for power purchased by the Edison Light and Power Company from the 9.07 mills in 1934 to 8.17 in 1935, as shown on Sheet 2 of that exhibit.

*H. Root Palmer—For Complainant—Direct*

By the Commissioner:

Q. And the charge to York Railways remains the same as in the previous years? A. Nine mills in that year.

Q. Was that the same as in 1934? A. The transfer of credit was on a different basis for the earlier years.

By Mr. Miller:

Q. Does that gain of \$3,258.31 indicated for 1935, mean that the Edison Light and Power Company made a profit of that amount for that year on the power sold to the York Railways Company? A. It does not.

The Commissioner: What is that, for 1935?

Mr. Miller: Yes.

By the Commissioner:

Q. Well, what did happen?

By Mr. Miller:

Q. Why do you say that, Mr. Palmer? A. That includes no fixed charges on the equipment, facilities supplied and maintained by the Edison Light and Power Company.

Q. In your opinion if the fixed charges had been included would that sum have been reduced or eliminated? A. Been eliminated and a loss substituted:

By the Commissioner:

Q. Well then, according to that same reasoning, under your reasoning over the years 1931, 1932, 1933 and 1934 the loss shown by your figures would be very materially increased, if these same factors were taken into consideration, the figures which you gave would have been much increased, would they not? A. They would have been increased by the amount of fixed charges of \$8,465.10 annually.

*H. Root Palmer—For Complainant—Direct*

Q. It would have run anywhere from eight to ten thousand dollars a year loss, is that right, roughly? A. Yes sir.

By Mr. Miller:

Q. And would that figure of approximately \$8,000 for fixed charges have applied in 1935? A. Loss or gain—the difference between the purchase price and the selling price.

Q. Then the loss in 1935 as indicated by your adjusted figures, by taking into consideration the \$8,000 maintenances and fixed charges would be approximately \$5,000 loss, is that right? A. Yes sir.

Q. Did you hear the testimony of Mr. McShea at the last hearing that the cost of purchased power to the Edison Light and Power Company for the first six months of 1936 averaged .0078 cents per KWH under the new contract? A. I did.

Q. Would that reduction in the cost of power to the Edison Light and Power Company mean that they would realize a profit on the power sold to the Railways Company? A. It would not.

Q. Why? A. On the basis of an average of 7.8 mills per KWH for purchased power for the first six months of 1936, the spread between the average purchase price and the price of transfer to the York Railways Company of 9 mills, would be 1.2 mills per KWH. To reimburse the Edison Light and Power Company for the carrying charges of \$8,465.10 would require an annual use by the York Railways Company of 7,054,250 KWH. The actual use by the Railways Company for 1935 was 4,250,970 KWH.

Q. Now, in addition to this \$8,465.00, are there other charges which are absorbed by the Edison Light and Power Company in connection with furnishing current to the York Railways? A. The operation and maintenance expense of its equipment in the generating station and the insurance.

Q. Did you give the use by York Railways for 1935 in KWH? A. Yes sir.

*H. Root Palmer—For Complainant—Direct*

Q. Will you refer to Exhibit 20 and explain your basis of allocation of the operating expenses between the steam generating and electric generating and the transmission groups? A. The allocations as shown are based on a field inspection of the operating conditions and the relation of expenditures to the various accounts for the conditions observed and corresponding to their separate operating companies.

Q. Now, that is in general. Will you please be more particular in the allocation to each and give the basis of the allocation to each group? A. The allocation to the electric generation is based on the segregation of the electric and steam generating property and operations, on the basis that the operating expenses are confined to the turbine operation and auxiliary apparatus, the steam being brought to the turbine room and the electric energy delivered to the switchboard.

The allocation to the transmission system group is based on the segregation of operating expenses as if the steam generation and electric generation were removed and all energy, whether generated at another location or purchased, was brought to the switchboard for control and distribution.

The allocation to the steam generation is based on the segregation of the operating expenses as if the only purpose was for steam heating service independent of any electric generation.

The total operating expenses shown in these exhibits allocated to steam generation are the total operating expenses taken from the respondent's records, and as shown on sheets designated 1931 to 1935, inclusive.

Q. Now, can you give me the percentage basis of your allocations? A. The classification account 350, 40 percent to steam generation, 40 percent to transmission groups and substations, 20 percent to electric generation. Account No.—

Q. Just a minute, Mr. Palmer, you say Account 350. Do you mean the account number in the Commission's Uniform Classification of Accounts? A. Yes, sir.



*H. Root Palmer—For Complainant—Direct*

Q. Did the company follow that uniform classification in connection with all of the items which you allocated? A. There was more than one classification used, but—

By the Commissioner:

Q. By the company? A. By the company, but they were adjusted to conform to the Commission's Classification.

By Mr. Miller:

Q. Can you give me the numbers of the company accounts which you used in arriving at your figures under each Commission account head? A. I cannot. The Bureau of Accounts has that information.

Q. All right, will you proceed. A. The classification of account 351, boiler labor, is allocated 100 percent to steam generation.

Classification account No. 352, engine labor, has been allocated 60 percent to electric generation and 40 percent to steam generation.

Account No. 353, electric labor, has been allocated 100 percent to transmission group, sub-stations.

Account No. 354, miscellaneous labor, has been allocated 20 percent to electric generation and 80 percent to steam generation.

The classification account No. 358, has been allocated to water, 85 percent steam generation, 10 percent transmission group, sub-stations, and 5 percent electric generation.

Account No. 359, lubricants, has been allocated 60 percent to steam generation, 20 percent to electric generation, and 20 percent to transmission group, sub-stations.

Account No. 362, other power plant expenses, has been allocated 80 percent to steam generation, 10 percent to electric generation and 10 percent to transmission group, sub-stations.

Account No. 363, station expenses, 80 percent transmission group, sub-stations, 20 percent electric generation.

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Account No. 365, maintenance station buildings, have been allocated 10 percent to electric generation, 20 percent to transmission group, sub-stations, and 70 percent steam generation.

Account No. 367, maintenance and boiler plant equipment, has been allocated 100 percent to steam generation.

Account No. 368, maintenance engines, has been allocated 100 percent to steam generation.

Account No. 369, maintenance turbo generators, has been allocated 100 percent electric generation.

Account No. 370, maintenance other generators, has been allocated 100 percent transmission group, sub-stations.

Account No. 371, switchboard and controls, has been allocated 70 percent transmission group, sub-stations, 30 percent electric generation.

Account No. 373, maintenance miscellaneous power plant equipment, has been allocated 10 percent transmission group, sub-stations, 10 percent electric generation, and 80 percent steam generation.

Q. Have you any further explanation you desire to make of the exhibits presented at the last hearing, Mr. Palmer? A. With reference to Exhibit No. 20, it appears, for example, in 1931 the allocated cost of steam generated was \$88,805. For the steam generated at this cost, respondent received from the steam heating company, as shown on Page 1 of this exhibit \$81,709.84. It is, therefore, apparent from an operating viewpoint alone that the revenue received for the sale of steam was not compensatory.

Likewise in 1932, the allocated cost of steam generated was \$89,548.00 and respondent received for the sale of such steam \$88,608.48.

In 1933 it appears that the cost of steam generation was approximately \$1500 less than the money received from the steam heating company, while in 1934 and in 1935 the operating cost alone again exceeded the revenue for the sale of steam.

*L. C. Bierman—For Complainant—Direct*

Since the primary business of the respondent is the furnishing of electric service and as it appears the revenue received for the sale of steam is not compensatory, the property used for generation of steam has been excluded from the reproduction cost estimate in an effort to include in that estimate only the property used for the furnishing of electric service.

Mr. Miller: Do you desire to cross examine at this time?

Mr. English: I prefer not, if that is agreeable to the Commission, until we have had an opportunity to examine the witness' testimony.

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L. C. BIERMAN, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miller:

Q. What is your name? A. L. C. Bierman.

Q. By whom are you employed and in what capacity? A. Public Service Commission as head of Electrical Engineering.

Q. What is your technical education? A. I am a graduate of Ohio Northern University in engineering.

Q. In what course? A. Civil engineering.

Q. And since your graduation what has been your experience in engineering work? A. Since my graduation I was employed in the Maintenance and Way Department of the Pennsylvania Railroad from January, 1918 to April, 1918; with the Central Iron and Steel Company from April, 1918 to June, 1918 as Transitman; from June, 1918 to July, 1919 with the Midvale Steel Company at Coatesville as Draftsman and Estimator; from July, 1919 to November, 1919 with the Central Iron and Steel Company at Harrisburg as Field Engineer,

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that is laying out reinforced concrete construction and general steel plant work, and from November, 1919 to April, 1927 with Gannett, Seelye and Fleming, Engineers, Harrisburg, Pennsylvania.

Q. And since 1927? A. Since 1927 I have been with the Public Service Commission.

Q. Now, in what business was Gannett, Seelye and Fleming engaged? A. Gannett, Seelye and Fleming were engaged in the engineering and construction practice, and also they were at the time I was with them interested in the operation of a number of utilities all over the United States.

Q. Did they do appraisal work? A. They did considerable appraisal work.

Q. Were you engaged during that time in any inventory and appraisal work? A. I was engaged during that time on a number of appraisals.

Q. Did those appraisals include appraisals of electric properties? A. They did.

Q. Will you name some of the electric properties you inventoried and appraised? A. Some of the electric properties included the Carlisle Electric Company, Carlisle, Pennsylvania; Solar Electric Company, Brookville, Pennsylvania; Southern Pennsylvania Power Company, Oxford, Pennsylvania; Northern Maryland Power Company, Elkton, Maryland; Ortanna Electric Company, Ortanna, Pennsylvania; Canton Electric Company, Canton, Pennsylvania; Blossburg Electric Company, Blossburg, Pennsylvania; South Carolina Power and Light Company, Kingstree, South Carolina; Tucumcari Light and Power Company, Tucumcari, New Mexico; Buffalo Light and Ice Company, Buffalo, Oklahoma; Yale Municipal Plant, Yale, Oklahoma; Tonkawa Municipal Plant, Tonkawa, Oklahoma; Woodward Municipal Plant, Woodward, Oklahoma; Kinder Municipal Plant, Kinder, Louisiana; --

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The Commissioner: Will counsel for the respondent admit the witness' qualifications as an engineer?

Mr. English: We are satisfied with the experience of the witness. We will not insist on further proof as to that.

Mr. Miller: Well, I see no reason for his reading all the electric plants which he has inventoried and appraised, Mr. Commissioner, but I would like to ask one or two other questions.

The Commissioner: If it serves any useful purpose all right, but I would like to get along as fast as we can this morning.

By Mr. Miller:

Q. Have you been engaged in the construction of any electric facilities? A. I was engaged on the construction of transmission lines from Franklinton to East Berlin; East Berlin to Abbottstown; Canton to Troy; Mansfield to Tioga.

Q. Are they all in Pennsylvania? A. They are all in Pennsylvania.

Q. Have you designed transmission lines? A. I designed transmission lines from St. Genevieve, Missouri to the Central Station of Illinois Central Power Company at Grand Tower, Illinois and have worked up tentative designs for interconnection of plants in Virginia.

9. Have you estimated costs for dams for hydro developments? A. I have. I made tentative studies for hydro developments for the Genessee Valley Power Company, Filmore, New York, and for a number of small developments in Virginia.

Q. Have you had anything to do with inventories and appraisals of the Scranton Electric Company and the Hershey Electric Company? A. I have. In the Scranton Electric Com-

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pany I was responsible for the inventory of sub-stations, distribution system and transmission system.

Q. In the course of your employment by the Commission have you had occasion to make estimates and appraisals in connection with formal and informal cases pending before the Public Service Commission? A. I have in connection with mergers, rates and also many rural lines.

Q. Are you a registered professional engineer in Pennsylvania? A. I am.

Q. Have you examined the inventory and appraisal of Day and Zimmerman of the property of the Edison Electric Company of York? A. I have.

Q. As of June 1, 1934? A. I have.

Q. Are you in agreement with the overheads applied by Day and Zimmerman to their cost figures? A. In my judgment there are certain overheads that are excessive.

Q. Have you prepared an exhibit setting forth the overheads you consider reasonable for property of this character? A. I have prepared such an exhibit.

Summary of reproduction cost estimate as of June 30, 1934, from page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from accounts 204-215, inclusive, for property used for steam production, property not used or useful, and property used exclusively for York Railways Company, and with adjustments in allowances for indirect costs, produced and marked Public Service Commission's Exhibit No. 21, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you a sheet marked Exhibit No. 21, and ask you if that is the exhibit showing your overheads that you considered reasonable? A. It is.

Q. Does that show also direct cost? A. It shows the direct



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cost of Day and Zimmerman as shown on Page 32 of their report, with deductions of certain accounts from 204 to 215 as shown in Exhibit 13, Page 16, that is, property excluded from steam production, property not used or useful and property used exclusively for York Railways Company.

Q. In other words, with adjustments as indicated by exhibits which Mr. Palmer analyzed? A. That is right.

Q. And you say Accounts 204 to 215? A. That is right.

Q. Both inclusive? A. Yes, sir.

Q. What is the total—

Mr. English: May I interrupt just a moment. I don't recollect that the Day and Zimmerman appraisal has been offered in evidence.

Mr. Miller: It has not been offered in evidence.

Mr. English: Am I right in that respect?

Mr. Miller: That is right.

Mr. English: Then I object to the witness' testifying with regard to it unless and until it is offered in evidence. He is predicating this exhibit entirely on something that is not before us, and I think that is improper.

Mr. Miller: These figures, however, were taken from the report of Day and Zimmerman. That is where the witness got the figures, and that is all the witness is testifying to. These are the figures in the Day and Zimmerman report.

Mr. English: The testimony of this witness is objected to because it is based upon a criticism of a report which is not before the Commission in this proceeding.

The Commissioner: I don't understand so: I understood this exhibit was simply a reproduction of figures that appear in the Day and Zimmerman report, is that correct?

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Mr. Miller: That is correct, Mr. Commissioner, without any modification except as indicated.

The Commissioner: The interpretation in this manner, as I understand it.

Mr. Miller: Except for accounts 204 to 215 inclusive, as the witness has indicated. In other words, the witness is now testifying as to what appears on the Commission's Exhibit 21, where he got the figures and what adjustments he made.

Mr. English: May I call attention to what it says. It speaks for itself. At the top, "Summary of reproduction cost estimate as of June 30, 1934, from Page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from accounts 204 to 215, inclusive," and so forth.

The Commissioner: Who made the deductions?

Mr. English: The witness said he did.

Mr. Miller: Mr. Bierman made the deductions.

The Commissioner: Is it your position, Mr. English, that these figures that purport to show the figures in the Day and Zimmerman report are or may not be accurate.

Mr. English: I don't know. My position is that the best of evidence of what the Day and Zimmerman report shows is the report itself, and until that is before us—

The Commissioner: The Day and Zimmerman report is an official record of this Commission in a previous proceeding, is it not?

Mr. English: Even if that were true, your Honor, it certainly ought to be in here.

The Commissioner: It was in a former proceeding, in a merger proceeding.

Mr. English: That is correct, but nevertheless it ought to be formally in this record before we have evidence in criticism or explanation of it.

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Mr. Miller: I didn't offer Mr. Bierman either to criticize or explain that exhibit.

The Commissioner: Mr. Miller, it seems to me that the point Mr. English raises is certainly technically correct and from a common sense point of view it seems to me it is also correct. If you draw conclusions or make deductions or additions to the report described as the Day and Zimmerman report, that report should be somewhere in this record by reference from the other proceeding or somehow. I don't see any possible objection to that. Is there, as to the Day and Zimmerman report?

Mr. Miller: The Commission has not been able to check the figures in the Day and Zimmerman report, Mr. Commissioner, to determine their accuracy.

The Commissioner: You are using some of the figures in the Day and Zimmerman report in this exhibit?

Mr. Miller: That is true. They have been taken by Mr. Bierman from the Day and Zimmerman report.

The Commissioner: Then why not incorporate the Day and Zimmerman inventory and appraisal in this record by reference, not as an admission by the Commission of it as a whole or any part of it. It speaks for itself as their inventory and appraisal.

Mr. Miller: Commission's Exhibit No. 17, Mr. Commissioner, was a summary of reproduction cost estimate of Day and Zimmerman, and there was no objection made to that.

The Commissioner: I quite understand that, but nevertheless that does not preclude, if it was not made then an objection to this exhibit based on that Day and Zimmerman report. I for the life of me cannot see any objection to including the Day and Zimmerman report in this proceeding by reference. Certainly it does not com-

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mit the Commission or the company either to the figures in the Day and Zimmerman report as a conclusion in this case.


Mr. Miller: I have no objection whatever, Mr. Commissioner to the inclusion of the Day and Zimmerman report in evidence for the purpose of checking the figures shown on Exhibit No. 21 which purports to be taken without adjustment from that report of Day and Zimmerman.

Mr. English: Of course, I have no further comment, because our position is definitely understood by the sitting Commissioner. I am sure if the report is offered we will meet it when it is offered.

The Commissioner: Do you offer it?

Mr. Miller: I don't have it yet, Mr. Commissioner.

The Commissioner: You don't need it. It is in the other record, and you certainly can incorporate it in this record by reference.

Mr. English: And we have a copy of it. 

The Commissioner: Don't you have a copy of your own inventory and appraisal of your own property?

Mr. English: I would be surprised if we didn't.

Mr. Miller: Mr. Commissioner, I will offer for inclusion in this record, for the purposes I have stated, the Day and Zimmerman report, No. 3054 as of June 30, 1934, particularly Page 32.

The Commissioner: That being an inventory and appraisal by Day and Zimmerman only of the property of the Edison Light and Power Company, is that correct, or is it an appraisal of both?

Mr. Miller: It is an appraisal of York Railways and Subsidiary Companies presented to York Railways.

The Commissioner: Well, in any case it includes

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that inventory and appraisal the property of the Edison Light and Power Company, does it not?

Mr. Miller: Yes, sir.

Mr. English: There is no doubt about that, Your Honor.

Mr. Miller: The Commission's testimony will be confined almost entirely to matters appearing on Page 32 of the report, Mr. Commissioner.

Mr. English: We have no objection to the report's being received in evidence for all purposes for which it will have evidential value. We would like to have it understood that it can be offered for any limited purpose. It will have to speak for itself, and be available—

The Commissioner: It will certainly speak for the opinion of Day and Zimmerman.

Mr. English: Exactly.

The Commissioner: And for no other purpose.

Mr. English: Right.

The Commissioner: It is an inventory and appraisal submitted by the company in a previous proceeding before the Commission. It will be admitted to the record for that purpose.

Mr. Miller: I don't care to offer it for general purposes. I will offer Page 32 of the Day and Zimmerman report as described.

Mr. English: As I understand it the entire report has been offered and received.

Mr. Miller: For a limited purpose, as I understood it.

The Commissioner: I don't quite understand, but to my limited intelligence there appears to be a little shadow boxing in this matter. What we are after is facts, at least I think we are, and I cannot see the disadvantage to either side in having available for refer-

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ence, either by the Commission or by the company, an inventory and appraisal which includes an inventory and appraisal of Edison Light and Power Company property submitted by the testimony of witnesses produced by the companies now involved in this proceeding at a previous hearing, by one of their witnesses, a man who was in charge of the appraisal and inventory of the company. Now the mere submission of that appraisal certainly does not bind the Commission to the inclusion stated by Mr. English as to the basis for rates in this proceeding, neither does it the Public Service Commission. I cannot for the life of me understand that.

Mr. Miller: My only objection, Mr. Commissioner, is to offering in evidence in toto and for all purposes a report which was submitted by the respondent in another proceeding, and which we have been unable to check in its details.

The Commissioner: What do you mean by, "for all purposes?" What harm can there possibly be to the Commission's case in including it.

Mr. Miller: I don't know what will occur to the bright minds of the respondents.

The Commissioner: I cannot follow that reasoning. The Commission knows what the picture should be, and the company has its own ideas of that. Certainly if you are drawing conclusions from an exhibit here in part, based on one or any number of pages of that Day and Zimmermann report, I see no possible reason why that report should not be in this record by reference.

Mr. Miller: I have no objection, Mr. Commissioner.

The Commissioner: Let us have all the light there is. We want the facts, and nothing but the facts.



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Mr. English: There is no question about that, Your Honor.

The Commissioner: I don't think there is any concealment intended by Mr. English, I will do him that credit, that there is no clever or covered purpose in having the whole thing introduced, and I myself think it should be. It certainly does commit either side to any part of it in this proceeding as I see it. As I understand it now the objection to comment on these figures of Page 32 as listed here is withdrawn in view of the fact that the Day and Zimmerman report is now included by reference in this record.

Mr. English: Right, Your Honor.

The Commissioner: All right, let us proceed.

Report No. 3054 on York Railways Company and subsidiary companies to York Railways Company, York, Pennsylvania, Day and Zimmerman, Inc., Engineers, letter of transmittal of the report being dated November 19, 1934, and the figures being given as of June 30, 1935, produced, marked and offered by reference, Public Service Commission's Exhibit No. 21A, E. E. M., 11/8/36.

By Mr. Miller:

Q. Now, have you stated what direct costs are shown on Exhibit 21? A. The direct costs shown on Exhibit 21 are \$3,522,618 new and \$3,182,902 new less accrued depreciation.

Q. And where did you obtain those direct cost figures? A. Those direct costs were taken from Page 32 of the Day and Zimmerman report, with adjustments made to the steam generating system property.

Q. Now, are the indirect costs shown on Commission's Exhibit No. 21, the figures used by Day and Zimmerman?

The Commissioner: The block at the bottom of the page.

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The Witness: The item of "Interest during construction," is the same as shown on the Day and Zimmerman report, that is, the percentage applied. The other percentages are different.

By Mr. Miller:

Q. Are the other percentages your own allowance? A. They are my own allowance.

By the Commissioner:

Q. Based on what? A. Based on my experience.

By Mr. Miller:

Q. And what is the total of your allowances shown on Exhibit No. 21? A. They are approximately 18 percent.

Q. Will you state how you arrived at that 18 percent figure. A. I applied preliminary and organization expense at  $11\frac{1}{2}$  percent; administration, legal and taxes  $11\frac{1}{2}$  percent; engineering and supervision 5 percent, and arrived at a sub-total of \$3,804,427.

By the Commissioner:

Q. What figures did you arrive at? A. A sub-total of \$3,804,427. That includes the direct cost. Also since I applied interest during Construction, 6 percent, and the entire cost up to that point amounted to \$228,266, I arrived at a further sub-total of \$4,032,693 to which I applied cost of financing of 3 percent or \$120,981, or a total of indirect cost \$4,153,674. Now, plus cash working capital, materials and supplies, of \$142,000 or a grand total of \$4,295,674.

By Mr. Miller:

Q. Did you perform corresponding computations with respect to the reproduction cost new less depreciation in the Day and Zimmerman appraisal? A. I did, with the exception of preliminary and organization expenses, I didn't depreciate that

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item. That is shown undepreciated, since I don't believe it should be depreciated.

Q. Of course, the cash and the materials and supplies go through as the same figures? A. That is right.

By the Commissioner:

Q. Then what is the grand total of reproduction cost less accrued depreciation? A. \$3,901,265, including cash working capital.

By Mr. Miller:

Q. What does preliminary and organization expenses cover? A. It covers cost of making preliminary studies and estimates, that is, canvassing the town for the purpose of obtaining data that will show the probable number of customers, making an estimate of probable consumption, construction of a tentative tariff and a study of gross revenue that may be expected annually; tentative design of a system and estimated cost to build the same; the organization of a tentative operating department, together with an estimate of the annual operating expenses, maintenance, depreciation and taxes; constructing a tentative financial structure and preliminary negotiations with bankers for the purpose of financing. In addition money must be provided to cover the incorporation fees, legal charges for the preparation of papers for a charter and recording the same, time and expense of the promoters, advertising matter, and so forth.

Q. Now, the item of depreciation, legal expenses and taxes, what does that item cover? A. It covers the cost of searching real estate titles, examination of contracts, examination of contractor's bond, writing mortgage, bond trustee's fees, recording mortgage, general officers' salaries, clerical help, office rents, telephone, auto-hire, books of account and other miscellaneous expenses and taxes during construction.

Q. You include the item of preparing the application for and securing the charter under preliminary studies and esti-

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mates, do you not, rather than under legal expenses and taxes?  
A. Yes.

Q. Do you have any particular reason for putting that in the preliminary study and estimate classification? A. No, except in my judgment I think that is where it should be placed.

By the Commissioner:

Q. It is all there, so it does not make any difference. A. Yes.

By Mr. Miller:

Q. Did you make an allowance for insurance? A. I didn't make an allowance for insurance as this item is usually considered as part of the direct cost, either in the contractor's field expense or in unit costs.

Q. What was the item of engineering and supervision? A. The engineering charge during construction represents cost of consulting and supervisory work of engineering and construction work. This includes the making of surveys and plans. The general design and construction of turbines, condensers, circulating pumps, boilers and stokers; where the power plant is to be located, whether there is sufficient water, kind and general design of station, buildings, stacks and flues, best arrangement for handling coal and ashes and cold storage plan; the most desirable plan of electric transmission and distribution; where the sub-stations should be located; general decisions on types of electrical equipment and other questions of engineering practice.

It will also require the laying out of mechanical and electrical equipment, such as turbines, engines, pumps and so forth. Specifications of all such apparatus must be prepared and the investigation and recommendation of equipment upon bids which are received. It would include the planning of the distribution and transmission systems, which would require

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the determination of electric demands in various parts of the system, location of distribution centers and feeding points, calculations of sizes of all mains and feeders, decisions on underground distribution and the planning of it, the preparation of maps and specifications for all line and underground construction.

Q. Why have you reduced the allowance for this item to 5 percent? A. It is my opinion that the allowance of 5 percent is sufficient, in view of the fact that this allowance is applied to general property and land, which I have usually applied, and also to the fact that there are certain allowances made by Day and Zimmerman in certain structural accounts, and these allowances were 5 percent omissions and contingencies, 7 percent contractor's overhead, 10 per cent contractor's profit, and 5 percent architect's fees, applied to the total, making an overhead item of about 30 percent.

Q. Now, turning to the cost of financing, what do you understand is meant by that item? A. I understand the cost of financing is composed of two parts. First, the mechanical costs, that is, expense incurred in the printing, and engraving, preparing and registering bonds, and some expense in connection with the stock including such items as counsel fees and expenses. Secondly, the fees paid to a broker or banker for consummating the sale of the company's securities.

Q. Have you had a study made of brokerage fees made by public service companies in Pennsylvania according to the Security Amendment in 1935 of the Public Service Company Law, as those brokerage fees are shown by securities application filed with the Commission and other similar data? A. I have.

Q. What was the result of that study? A. I find that out of 202 applications filed between July 1, 1935 and November 15, 1936, 29 related to sales of securities to the general public, either directly by the public service company or through an underwriter or broker, the tentative security issues aggregating over a million dollars—

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Mr. English: Just a moment. This testimony is objected to as not being competent or material to any of the matters before the Commission at this time, and as being wholly outside of the scope of the witness' qualifications to testify.

Mr. Miller: Mr. Commissioner, the witness is giving the basis of his cost of financing allowance.

The Commissioner: I certainly think the witness has a proper right to state on what basis he arrived at an allowance of 3 percent for cost of financing.

Mr. English: Based upon the type of financing he is relying upon I say the testimony so far as he has developed it would disqualify him to express an opinion.

The Commissioner: You mean the experience of the Commission in the last three years, in the cost of financing, as shown by these security applications, is not pertinent to the estimate of the percentage allowed.

Mr. English: That portion, of course, is material.

The Commissioner: That is all I understood he is testifying to.

Mr. English: He has not dealt with comparable companies in what he has said.

The Commissioner: He is only testifying as to how he arrived at this figure of 3 percent.

Mr. Miller: At least part of his examination was on applications filed with the Commission, which was the basis for his allowance.

The Commissioner: I will overrule the objection as to this testimony, since in my opinion it relates solely to the basis on which the witness arrived at the figure of 3 percent for cost of financing. It will be allowed for that purpose.

The Witness: Tentative security issues aggregating over a million dollars, sold directly to the public, and in consequence no commission was paid to a third party.



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Of the other 19 twelve involved \$137,233,000 of securities that were underwritten, which shows a range from  $1\frac{1}{2}$  to 3 percent, and the average was 2 percent. One issue was sold to investment bankers and the commission in this case was not registered.

Mr. English: May I suggest, your Honor, it may save time later, if the Commission gives the names of these companies, we certainly are entitled to that, perhaps not now, but on cross examination—give us an opportunity to check it.

Mr. Miller: Surely, we will be glad to.

The Commissioner: That will be furnished.

The Witness: These sold on brokerage numbered 7 involving \$117,530,000 of security, the commission ranged from  $\frac{3}{10}$  of a percent to 5 percent with the average being about  $2\frac{1}{2}$  percent. The average commission, brokerage and underwriting 2.2 percent, and in my calculation I have allowed  $2\frac{1}{2}$  percent, and in addition a mechanical cost of  $\frac{1}{2}$  percent, a total of 3 percent.

By Mr. Miller:

Q. Did you in making that allowance take into consideration the size of the security issue? A. Yes, I did, and I might add that where we had information in regard to the mechanical cost the average cost was  $\frac{4}{10}$  of a percent.

Q. How did you arrive at the item of \$104,000 for working capital, the cash I mean in the working capital account? A. I took the operating expenses for 1935, less taxes and depreciation and prorated that.

Q. The item of \$38,000 for materials and supplies, what about that? A. That was taken from the balance shown between 1931 and 1935, less coal on hand. The coal I assumed went to the steam heat plant in the proration.

Q. Now, after arriving at your independent estimate on the basis of your experiences, and of the check that you tes-

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tified you made of applications to the Commission, did you make a further check of the estimates against the allowance made by appellate courts of Pennsylvania? A. I did.

Q. Will you state the result of that check? A. In *Chambersburg Gas Company and others vs. the Public Service Commission*, Volume 116, Pa. Superior Court, Page 196, decided February 1, 1935, the court confirmed the Commission's allowance of 3 percent of the cost of property including overhead costs as the cost of financing. The overhead costs included 5 percent for engineering, except land, which was 2 percent; 1½ percent for organization and promotion; 1½ percent for administration, legal expenses and taxes during construction, and 3 percent as interest during construction. In the *Cheltenham and Abington sewage case*, decided July 10, 1936, the Superior Court allowed 12.4 percent of the reproduction cost new of the physical property for preliminary, organization, engineering, administration, superintendence, legal expenses and interest during construction.

Q. Do you have any further explanation on Commission's Exhibit No. 21? A. I think everything has been covered.

By the Commissioner:

Q. Mr. Bierman, to have this clear, these figures on Exhibit 21 are they or are they not the figures that appeared on Day and Zimmerman report in any form? A. The figures in this exhibit are the same as the Day and Zimmerman report—

Q. Both as to the cost new and depreciated? A. On the following accounts, transmission system, distribution system, utilization system and general property.

Q. As to both new and depreciated? A. That is right.

Q. The figures in the first block, steam generating system, there you took the Day and Zimmerman figures and made certain deductions both on new and depreciated? A. That is right.

Q. And the figures in the bottom block on the page, indirect costs, are your own? A. That is correct.

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Q. And not Day and Zimmerman's? A. That is correct.

Q. What is the total of the Day and Zimmerman figures new and less the depreciation as compared with your figures at the bottom of your page? Is there anything comparable to that?

Mr. Miller: There must be.

Mr. English: As I understand it, Your Honor, and if I am wrong, I hope the witness will correct me, there has been deducted from the item of steam generating system what has been referred to here as property exclusively devoted to the production of steam and possibly another deduction for the property exclusively devoted to the production of power for the Railways. Am I right about that?

The Witness: And also property used and useful, there is still a further deduction.

Mr. Miller: In other words, three types of deduction, Mr. English.

The Commissioner: Which is explained at the head of the sheet.

Mr. English: Yes.

Mr. Miller: And the reasons for those deductions were testified to by Mr. Palmer.

By the Commissioner:

Q. Putting it another way, what is the total, the grand total under the Day and Zimmerman report new and less depreciation? A. New \$5,485,524; and less accrued depreciation \$4,908,016.

Q. Then less accrued depreciation it is just about a million dollars more than your figures, is that right? A. That is right.

Mr. English: But they are not comparable figures.

The Commissioner: I understand that. The statement was that they are not comparable figures. In Exhibit 21 we have left out certain items of property that appear on the Day and Zimmerman report.

*R. A. McShea, Jr.—For Complainant—Direct*

Mr. English: We want that very clearly kept in mind.

The Commissioner: Have you any cross examination?

Mr. English: Not for the present, if that is agreeable.

R. A. McSHEA, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miller:

Q. Mr. McShea, have you prepared statements of the capital donated to respondent by certain of its customers? A. I have.

Statement of capital donated by customers as of June 30, 1936, produced and marked Public Service Commission's Exhibit No. 22, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you a collection of sheets marked Exhibit No. 22, and ask you if these sheets in this exhibit are the statement to which you refer? A. These sheets are the statements of the capital contributed by customers.

Q. What was the total accumulated donated capital, or what is more commonly known as, "Consumer contributions," as of June 30, 1936? A. \$267,514.68.

Q. Is that amount recorded on the books of the company as consumer contributions? A. There is an amount recorded on the books for donated capital, but not in that amount. The amount recorded on the books as of June 30, 1936, was \$154,859.78.

Q. How did you determine that the capital donated by customers amounted to \$267,514.68? A. During 1934 the Commission and respondent held several conferences relating to the earnings of the respondent. These conferences ended when the

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respondent reduced the rates effective in February, 1935. For the purpose of these negotiations I prepared rate of return calculations from the book value of the property as reflected by the books and in the annual reports. It was called to the Commission's attention by respondent's representatives that the books did not reflect the cost as value of many items of property owned by the respondent, but paid for by certain customers over a period of years. In support of this statement the respondent submitted a schedule, consisting of several sheets, and entitled, "Lines Financed by the Customers and Built by Contractors," dated January 18, 1934, as of October 31, 1933. A copy of this schedule is included in our Exhibit No. 22 as Sheets 2 to 10 inclusive.

Q. What was the respondent's estimate for lines financed by the customers and built by contractors as of October 31, 1933? A. \$231,374.84.

Q. Where is that amount shown on Exhibit No. 22? A. On Sheet 2, Line 10, and also on Sheet 1 at the total line, 7.

By the Commissioner:

Q. What do you mean on that page by the setup you have there, the first block, the figures on contributions? Contributions made by whom, the consumers? A. That amount as I understand it represents cost to the customers for lines built and property constructed to serve those customers.

Q. And paid for by the customers? A. And paid for by the customers.

Q. Then you have the second amount which you deduct from the \$230,000? A. That is right.

Q. What does that mean, "Private?" A. That means that property to the extent of \$19,423.69, that is the total of property that was retained by the customers and not turned over to the company.

Q. And then you have the heading, "Turned over to company," what do you mean by that? The customer said to the

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company: "I turn over to you the lines that I built," or did the company just assume that they were their lines? A. The customers turned those lines over.

Q. Now, how did they turn them over? Or did the company just assume them? A. I believe they actually deeded them over. I believe that is correct.

Q. All right, they actually deeded them over. \$231,000 worth of property paid for by the customers was deeded over or turned over to the company, is that right? A. That is right.

Q. Now, does that \$231,000 appear anywhere on their set-up as part of their structures, as in their property on which they are entitled to earn a return? A. You mean does that property appear in the Day and Zimmerman appraisal for instance?

Q. Yes. A. I believe so. At least we were told that by certain members of the organization of the company while in York.

Q. What have you done with this \$231,000 the calculations? A. You mean rate calculations?

Q. Yes. A. I have not done anything in this case.

Mr. English: I take it, however, that the witness inferentially suggests that the Commission do something with it.

The Witness: I have done many things with it informally.

By the Commissioner:

Q. What I am trying to get at is, to state it plainly: In your opinion I take it your thought is that the company should not be allowed to earn a return on property which has been paid for by the customer? A. That is right.

Q. Because it was the consumer who paid for the property, and he would be paying a return to the company on property which he had paid for himself? A. That is right.



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By Mr. Miller:

Q. Now, among other things that you did informally with this \$231,000, Mr. McShea, did you bring it down to date? A. Well, speaking formally now, I brought it down to date. I brought it down to June 30, 1936.

By the Commissioner:

Q. And is that shown on Exhibit No. 22? A. On Sheet No. 1 of Exhibit No. 22 is a summary of the different kinds of items making up the total donated capital of \$267,514.68.

The first item is the company's statement of \$231,374.84 as of October 31, 1933.

The second item represents the cost of lines financed by customers and donated to respondent from October 31, 1933 to June 30, 1936, in the total amount of \$3,080.27. The cost to the donors and other information is shown on Sheet 11 of Exhibit 22.

By Mr. Miller:

Q. I see on Sheet 2 of Exhibit 22 that ownership of some lines was retained by the customers as of October 31, 1933. Have any of these lines since been deeded over to the respondent? A. Yes, the third item on the summary sheet, amounting to \$4,593.00, which represents the cost of these lines financed by customers up to October 31, 1933, the titles to which were originally retained by the customers but which were turned over to the respondent after October 31, 1933.

Q. What is represented by the fourth item on the first page of the exhibit in the amount of \$1,896.90? A. In making our check, our field check of the statement originally submitted by the company as of October 31, 1933, we found three items which we deal with, inadvertently omitted by the respondent in preparing this schedule.

Q. Are those listed in detail in the exhibit? A. They are detailed on Page 13 of Exhibit 22.

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Q. What does item No. 5 represent? A. This item which amounts to \$22,578.46 represents items of donated capital as recorded on the books, but not included in any of the preceding items, that is, items 1 to 5 on Sheet 1 of Exhibit 22. The details of these items are shown on Sheet 14.

Q. What does the sixth item cover? A. This item which amounts to \$3,991.21 represents the amount of capital donated by customers and recorded on the books, but not as donated capital. Out of the total of \$3,991.21 the sum of \$1,382.79 was credited to fixed capital, the remainder being credited to miscellaneous income accounts.

Q. Have you prepared an estimate of the original cost of the respondent company? A. I have.

Q. Have you reduced that estimate to statement form? A. I have.

Statement of estimated original cost of property as of June 30, 1936, produced and marked Public Service Commission's Exhibit No. 23, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you Commission's Exhibit No. 23, and ask you if that is the statement to which you refer? A. It is.

Q. What does this exhibit show as to the estimated original cost of the property as of June 30, 1936?

Mr. English: Just a moment. I think we ought to have something more definite as to the circumstances under which and by whom the exhibit was prepared. It is rather comprehensive.

By Mr. Miller:

Q. Mr. McShea, was this exhibit prepared under your personal direction? A. Yes.

Q. Did you direct the preparation of the exhibit and the manner in which the books were examined to procure the figures and the manner in which the exhibit was made up? A.

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Well, I directed all of the field work down at the offices of the company; all the work that was done for the purpose of preparing such an exhibit as this. I was in close touch with the work as it progressed, and when the field work was finished I personally prepared this sheet which is now being identified as an exhibit.

Q. Then do I understand that from data obtained from the books of the company and analysis by you, you personally prepared this exhibit? A. I will say yes to that with one qualification, that all of the information used in preparing this exhibit did not come from the books.

By the Commissioner:

Q. Where did it come from? A. We went over all of the books that were available in the company's office in York. We had books for two of the largest constituent companies giving electric service in York, that are now part of the Edison Light and Power Company. Those two companies were the Edison Electric Company, which dates back to 1886, the other company being the Merchants Electric Light and Power Company, which operated from 1900 until 1915. Now, there were three other companies, the Peoples Electric Light Company of York, for which we had no books at all, except for a very short period I think in 1898. Those books were of no help at all. The Westinghouse Electric Light and Power Company operated from 1893 until the property was sold to Edison Electric Company in 1908, and we had no books for that company. The Red Lion Electric Light Company, which operated from 1891 to 1905, also left no books.

By the Commissioner:

Q. What do you mean they left no books? A. Well, we found none. The company could not produce any books for that company.

Q. Where did you get the figures for these companies that appear here? A. We examined the tax reports that are filed

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with what is now called the Pennsylvania Department of Revenue, and we did find some information on those capital stock reports, and where we could not get information on these small companies from books we attempted to fill in the gaps from the tax reports.

Q. Those were the two sources from which you got your information for this report? A. That is right, except that the Peoples Electric Light Company tax reports gave very little information, and the question came up as to the property. I located the date of incorporation, or the date on which letters patent were received by that company, and I testified at the last hearing that the letters patent were received in 1891, but we found by reference to the tax reports that the company apparently had been operating as far back as 1886. So then we went to the office of the Secretary of the Commonwealth and found the letters patent were originally issued May 4, 1896, and the new letters patent were issued in 1891, when the company accepted the general incorporation act of 1874 and the amendment of some date in 1889. There is one other thing, in looking up the application for letters patent in the office of the Secretary of the Commonwealth, there was a statement—

Q. As to this Peoples Electric Company? A. As to the Peoples. There was a statement in there by the parties that made the application, that the value of the property at that time was \$18,000, and I used that \$18,000 as a starting point for the Peoples Company. They are the three sources from which I received information for the preparation of this exhibit.

By Mr. English:

Q. Was any property omitted in the preparation of this calculation, may I inquire? A. No, there was nothing omitted. I have a reconciliation of the difference between my original cost figure and the book value on Page 2 of this exhibit.

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By Mr. Miller:

Q. Mr. McShea, does the figure of \$4,382,647.08 reflect just the cost of property paid for by respondent, or does it also include the cost of property paid for and donated by certain consumers and donated to the respondent? A. It reflects the cost of all property paid for by the respondent and in addition certain property paid for by customers and donated to respondent.

Q. What is the extent of the donated property? A. On June 30, 1936 the respondent's books show donated property in the amount of \$154,859.78 as a credit to reserve for renewals and replacements, and a charge to fixed capital.

Q. Was any property donated by customers and recorded in a different manner? A. Yes. Donations aggregating \$28,659.92 were received from customers, and credited by the respondent as follows:

\$24,235.49 to fixed capital; \$1,780.93 to jobbing work revenue, and \$2,643.50 to various other accounts.

Of the \$24,235.49, the sum of \$14,917.70 was subsequently charged to fixed capital and credited to reserves for renewals and replacements as donated capital, thus leaving \$9,317.79 as the amount still standing as a credit to fixed capital.

Q. What is your estimate of the original cost of the property paid for by the respondent or its predecessors?

Mr. English: We object to that for the reason that the witness is not qualified to express an opinion as to the estimated original cost of the property. As I understand it he has through his associates caused an examination of the books of the company to be made, and also an examination of certain tax reports filed annually with the Commonwealth. There could be no objection, whatever these figures are, for any proper use that may be made of them, but when an accountant undertakes to

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estimate and fill in gaps as to what certain property may have cost, I submit that he is going far afield.

The Commissioner: What gaps are you filling?

Mr. English: He says he is filling in some. I don't know what, but I do think we ought to find out before he is allowed to proceed to specify as to what that "some" is.

The Commissioner: Let us find out what gaps there are.

Mr. Miller: His qualifications were admitted, Mr. Commissioner.

Mr. English: As an accountant, yes.

Mr. Miller: No, they were generally admitted to testify as to the result of his study of the books and estimates made by him based upon those studies.

The Commissioner: The point right now, as I understand, that Mr. English makes, if there are gaps to fill in in addition to the figures taken from the books, from the tax reports, and from the Secretary of the Commonwealth's office, Mr. English would like to know what gaps those were that were filled in.

Mr. Miller: We have no objection to that whatever.

The Commissioner: I think it should be stated.

Mr. English: How much estimating this witness did.

The Commissioner: Beyond the point described, from the books, reports and so forth.

Mr. English: Yes, Your Honor.

Mr. Miller: I think that could be developed in cross examination.

Mr. English: He has put into the record these figures which necessarily seem to me from his statement must include some cost or estimate of what he has done in regard to the original cost of certain elements of property.



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The Commissioner: I think it is entirely proper that Mr. McShea should state at this time what filling in he did beyond the figures he described as gathered from these three sources, the books, the tax reports and from the Secretary of the Commonwealth's office, if any.

Mr. Miller: Do you want all of the detailed figures at this time?

Mr. English: Absolutely. I don't mean to interfere with the orderly manner in which he wants to conduct his case.

The Commissioner: For example, if a figure is broken down into 100 items, of \$5.00 each, you don't want each single item, you want that figure and where it is gotten from.

Mr. English: We want to do it in the most sensible way. We want an opportunity of examining these figures. We may not insist on getting them all into the record, but we would like to know what they are.

The Commissioner: And where they were gotten?

Mr. English: Absolutely.

The Witness: Will it answer for Edison Electric, and Merchants Electric Light, Heat and Power Company, if I say I received those figures from the books of these two companies?

By the Commissioner:

Q. Those were not interpretations or deductions and additions on your part? Those figures are the figures on the books? A. They are figures on the books, but I made adjustments which appear—

The Commissioner: No adjustments made as to those appearing and as described in detail on the second page of this exhibit?

The Witness: That is right.

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Mr. English: Edison Electric Light Company and Merchants Light, Heat and Power Company.

The Witness: That is right, in column "h".

Take column "d", Edison Electric Light Company, those figures came from the books.

The company in column "f", York and Windsor Electric Light Company, those figures didn't come from the books. That company is in the same category as the three I mentioned awhile ago.

By Mr. Miller:

Q. Where did the figures for the York and Windsor Electric Light Company come from, Mr. McShea? A. I thought I would take these up in order after I did state what I did get from the books.

The Edison Light and Power Company, the first company organized in 1913, column "g", those figures came from the books.

Merchants Electric Light, Heat and Power Company, column "h", they came from the books.

Edison Light and Power Company, the present respondent, column "i", those figures came from the books.

Taking up first the Peoples Electric Light Company of York, I think I have already stated, where the \$18,000 came from, is that right? Do you want more? Between the time when the Peoples Electric Light Company was organized and according to the application, the property had a value of \$18,000. At the time when the property was sold to Edison Light and Power Company in 1894 there were no books, but the negotiations showed the cost of the property. In our examination of the Edison Light and Power Company we found a statement in the minutes of that company dated April 11, 1894, which contained a statement or balance sheet dated April 11, 1894, which gave the book value of the property on that date at \$62,582.48.

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By Mr. English:

Q. Which company is that? A. That is the Peoples.

The Commissioner: The first column.

By Mr. Miller:

Q. That appeared on the books of the predecessor of the Edison Light and Power Company, did it, Mr. McShea? A. No. No, that figure appeared as a statement in the minutes of the Edison Light and Power Company.

Q. Go ahead. A. I took this figure, \$62,582.48, subtracted from it the \$18,000, which I used as a starting point on May 4, 1896, and attempted to account for the difference of \$44,582.48. In the Department of Revenue we examined the books and reports of the Peoples Electric Light Company of York, and those figures and reports contained practically nothing with respect to the cost of the property. However, they did show the amount of the authorized capital stock in each year from 1886 to 1893, and the amount of the paid-in capital stock in each year during the same period. We found that between 1886 and 1887 there was an increase in the paid-in capital stock of \$8,275. I used that figure as the cost of property installed during 1887 for the best estimate I could get at that time.

In 1888 there was no change in the capital stock of the company, either authorized or paid in, so I showed no additions for 1888.

In 1889 the paid-in capital stock was increased from \$25,000 to \$50,000, an increase of \$25,000, which I show as the cost of property in 1889.

The capital stock report for 1893 showed the item of betterments in the amount of \$3,624.56. Taking all those items together, starting with the \$18,000, the \$8,275.00 in 1887, \$25,000 in 1889 and the \$3,624.56 in 1893, I was still short \$7,682.92, which I divided three ways, and applied from 1890, that is one-third in 1890, one-third in 1891 and one-third in 1892.

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Mr. English: As I understand the witness has taken the increase from time to time in the authorized capital stock of the corporation and recorded such increase as reflecting his estimate of the original cost of the physical property. If that is to be a precedent we would be very happy to avail ourselves of it in other directions.

The Witness: Mr. Commissioner, I don't say authorized, I say increase in paid-in capital stock.

By the Commissioner:

Q. What you were doing I understand, Mr. McShea, was arriving at some reconciliation figures which would bring you out to the amount recorded on the Edison Light and Power Company books later on at \$62,582.48, is that right? A. I attempted to come to the figures as shown for the cost of the property in the balance sheet contained in the Edison Light and Power Company minutes.

Q. Yes. A. As a matter of fact the price paid by the Edison Light and Power Company for that company was somewhat in excess of \$62,000. The excess being in some small amount which appears on Sheet 2.

Mr. English: I don't wish to be overly critical, and I have no objection to that explanation. What I do object to is calling the result of that investigation an estimate of the original cost of anything.

Mr. Miller: We are presenting this, Mr. English, since the Act requires that the Commission consider the original cost of property in a rate case if original cost can be arrived at, and we are presenting this estimate as the result of our best estimate to arrive at the original cost of the property.

The Commissioner: I understood that this witness was explaining at my own suggestion, after Mr. English raised the point, as to where he got any figures that were

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not described in this general picture before with respect to the Peoples Electric Light and Power Company and other companies.

The Witness: I might mention that during all this time that the Peoples Electric Light Company was in existence I could find no evidence of bonds or other indebtedness outstanding.

Mr. English: The point I make, Your Honor, and I want to emphasize it, is that inadvertently, of course, they are calling these figures by their wrong names. This is not an estimate of the original cost of property. It would be entirely competent to say what the increases were from time to time in the capital stock of any of these corporations, but let us call it by its right name.

The Commissioner: I think, Mr. English, we ought to finish what was asked for in response to your own question, that is, where did he get the figures as to the companies which did not meet the picture. Let us finish that first. Let us follow my suggestion, and let us proceed in answer to the suggestion I made on the point raised by Mr. English. Now, we have gotten to the point where we have arrived at the figures for the Peoples Electric Light and Power Company.

By Mr. Miller:

Q. Will you give the same information as to the Westinghouse Electric Light Heat and Power Company? A. I also reviewed the capital stock reports of the Westinghouse Light Heat and Power Company and found in the reports from year to year conflicting statements of the cost of the property, and felt that since there were no book calculations from year to year, for instance, the amount of property in 1896 was greatly below the figure for the cost of the property in 1894, that those figures could not be relied upon to give a fair indication of the actual plant costs.

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The capital stock tax reports also gave considerable information concerning the liabilities of the company and the capital stock. There were no bonds or funded debt, for instance, from 1892 until 1908. The bills and accounts payable were very small—well, there was \$5,200 in 1893-4 and \$1,000 in 1896 and after that nothing is listed for bills and accounts payable.

In 1893 there were other liabilities of \$11,364.94, and in 1894 that amounted to \$12,684.31. The account for 1895 contained no information on that. In 1896, and thereafter, their liabilities were negligible. Since there were no bonds outstanding for this company, no bonds had ever been issued, I assumed that all of the paid-in capital stock in this case also was invested in the plant, and for my first figure in column "c" Exhibit 23 I used the paid-in capital as it appeared in the capital stock tax report as \$24,465. ♦

Now, in 1894 there was an increase of \$965.

In 1895 there was a decrease of \$320, so I made no change.

In 1896 there was an increase of \$290; in 1897 an increase of \$740; in 1898 there was an increase of \$5, and from then on until 1906 paid-in capital remained at \$26,465.

In 1898 the capital stock tax report showed betterments during that year in the amount of \$110.98, so I used that figure as being the cost of additions in that period.

During the period from July 1, 1899 to December 31, 1901 this property was recorded on the books of the York Light Heat and Power Company, and from that source we received or ascertained the cost of property installed for the Westinghouse Company in 1900-1901.

The books of the York Light Heat and Power Company show additions between July 1, 1899 to June 1, 1900 in the amount of \$3,277.33.

For the period from July 1, 1900 to December 31, 1901 the net additions for the Westinghouse Company appear on the



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books of the York Light Heat and Power Company to have been \$2,533.53.

The credit figure of \$117.06 in 1903 came from the Westinghouse Company's books—

By Mr. English:

Q. Why is that in red ink? Because it was a deduction from retirements exceeding the cost of additions?

By Mr. Miller:

Q. Do the items marked in red ink, Mr. McShea, appear in the same amount, or included in the amount appearing in blue ink to the right of the red ink figures? A. I understand Mr. English was referring to the item opposite Line 19, \$117.06.

Mr. English: Right.

By Mr. Miller:

Q. That is taken into consideration in the item immediately to the right of the \$117 item on the same line, \$22,288.67, is it not? A. No, it does not have anything to do with that figure.

The Commissioner: The comparable figure is over toward the right, half way across the page, where the Westinghouse figures are all brought into totals, that is where they appear.

Mr. English: That would be the last column?

The Commissioner: Just beyond the middle of the page.

By Mr. Miller:

Q. The \$117.06 figure is a retirement, is it not, Mr. McShea?

A. I assume it is a retirement which exceeds the additions that year.

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By the Commissioner:

Q. You see the figure before that, \$32,331.00, the next figure on the same line as the red figure is \$32,214.78? A. That is right.

By Mr. Miller:

Q. And then down on Line 26<sup>o</sup> the figure \$32,214.78 is carried over into the Edison Light and Power Company books as a close-out figure? A. That is right, that is the day on which the Westinghouse property was sold to the Edison Electric Light Company.

Q. Now, Mr. McShea, in connection with these first two properties, from what source could the Peoples Electric Light Company of York and the Westinghouse Electric Light Heat and Power Company have obtained funds to use in the purchase of property? A. They could have obtained funds from the sale of capital stock, the sale of bonds or the borrowing of money.

Q. Could they also have obtained funds from earnings? A. Yes.

By the Commissioner:

Q. If they had them? A. If they had them, certainly.

By Mr. Miller:

Q. Have your studies revealed whether or not there were any surplus earnings of those companies from which property could have been purchased?

Mr. English: That is objected to. What we are interested in is what was done and not what might have been done.

By Mr. Miller:

Q. All right, Mr. McShea, what did they get the money from?

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Mr. English: If the books show.

The Commissioner: If you know.

The Witness: As nearly as I can determine from the tax reports the money was received from capital stock issued. There may have been some added to that, some available funds added to that from the earnings in the early days. Of course, they didn't all earn right from the beginning.

By the Commissioner:

Q. Of course, you don't know that. A. I examined the earnings of the following companies also, and have got an exhibit to show what that amounted to.

Q. Now, we have got one other company, as I understand it, that don't appear from the books, and that is the Red Lion, is that right? A. Yes sir.

The Commissioner declared a recess until 1:30 o'clock  
P. M.

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AFTER RECESS

R. A. McSHEA, recalled.

*Direct Examination*

By Mr. Miller:

Q. Before you proceed, will you state what the minute books and the tax reports and the other data which you examined show as to the sources from which money for plant construction was received by the Peoples Electric Light Company of York and the Westinghouse Electric Light Heat and Power Company? A. The balance sheet which I previously referred to, which was dated April 16, 1894 showed assets consisting of machinery and construction in the total amount of \$62,582.48.

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the liabilities shown on this balance sheet consisted of capital stock in the amount of \$50,000, and undivided profits in the amount of \$12,582.48. From this balance sheet and from the tax reports and from records that I examined relating to the Peoples Company I believe that all the money used in constructing property by that company came from the proceeds of the issuance of capital stock and the undivided earnings.

Q. Have you arrived at a conclusion as to the source of the money for purchase of the property of the Westinghouse Electric Light Heat & Power Company? A. Yes sir.

Q. Will you state that conclusion and the basis for it? A. In 1908 the last balance sheet filed with the State Department now known as the Pennsylvania Department of Revenue, there was capital stock outstanding in the amount of \$26,345.00, all being paid in. There was no funded debt at that date or at any time prior to 1908. There were no bills and accounts payable outstanding in 1908. The last report showing a liability for bills and accounts payable was in 1896 when \$1,000 was the amount shown. From this information I concluded that the property of the Westinghouse Company was built out of proceeds from the issuance of capital stock and undivided profits.

Q. Will you proceed with your general description? A. Going on next to the Red Lion Electric Light Company, and giving the source of the information shown by column "e" on Exhibit 23, all of the information shown in that column, which started with \$950.00 in the year 1891, next showing \$55 in 1892, next showing \$2,645 in 1896, next showing \$450 in 1897, next showing \$7,350 in 1902, and last showing \$200 in 1905, all came from the capital stock tax reports filed by the company. There were no books available for examination during any of the period for this company. The capital stock tax reports did not contain a great deal of information, but from the information that was given I came to the same conclusion

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with respect to the Red Lion Company as to the source of the funds, with which the property was constructed.

Mr. English: I object to that, and move the answer be stricken out, and ask that the witness produce the evidence from which he says he drew a conclusion so that we may draw ours.

The Commissioner: You mean the capital stock reports?

Mr. English: Yes sir. He says that the capital stock reports in this case did not give him much information, but from some other source he does not name or indicate he got something from which he drew this conclusion.

By the Commissioner:

Q. Where did you get your information other than the capital stock reports? A. I did find from the capital stock tax reports of the Red Lion Company that they had no bonds outstanding in 1904, the last year for which they filed a capital stock tax report, and from the tax reports I was able to determine that there were no bonds outstanding—determined 95 percent anyhow, no bonds outstanding from the beginning of the organization until 1905.

Q. Does that total item of \$11,650 appear anywhere in the books of the Edison Electric Light Company? On the sheet just before that it is translated as \$11,450? A. By the balance sheet shown on the books of the York and Windsor Company, following the merger of April 1, 1905 the \$11,450 was dropped and the \$11,650 substituted. Now, that was done for the reason that the York and Windsor Company was formed by merger and consolidation of the four companies, the Red Lion Company and three non-operating companies, so that the York and Windsor was started with the property of the Red Lion Company, except for what organization ex-



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penses might attach to the other three. That is the reason I started with the \$11,650 in the case of the York and Windsor. Now, that \$11,650 does not appear on the books of the York and Windsor or the Edison Electric Light Company. That is the answer to your question.

The Commissioner: Is it your position, Mr. English, that you want the capital stock reports produced in this case?

Mr. English: Not necessarily, no, but I want the source indicated before he is allowed to testify.

The Commissioner: He has stated them now, namely, that they are only the capital stock reports.

Mr. English: As I understood him, Your Honor, he said with regard to the Red Lion Company the capital stock reports gave him no information aside from the fact that there were no bonds outstanding as appearing by some of these reports. That does not justify the statement that the property was built up out of capital stock proceeds and earnings. There is nothing in that source of information to justify that opinion, as I see it.

By Mr. Miller:

Q. Have you stated all the information derived by you, Mr. McShea, was from the capital stock reports? Are these figures under the Red Lion Electric Light Company all figures taken directly without adjustment from those reports? A. That is correct, for all periods except 1905 where \$200 is shown. I don't think we had the tax report for that year.

Q. Where did you get the \$200 figure? A. Wait till I think where that came from.

The Commissioner: It is so insignificant that I don't think it is worth pursuing. Are you attempting to reconcile the figure of \$11,650 or what?

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The Witness: Well, I took \$11,450 of it from the capital stock tax reports. Now, the \$200 came from some place else.

By Mr. English:

Q. Have you examined the tax reports for the years where blanks are shown here? A. Oh, yes, it might take a little time to find that.

The Commissioner: Can we produce that at some later time?

By the Commissioner:

Q. What about these blanks in the years which you show blank, in those years the capital stock reports I take it showed no change over the year before? A. That is right.

By Mr. Miller:

Q. Mr. McShea, will you state why your examination of this data led you to the conclusion that the Red Lion Electric Light Company had financed its plant construction by means of stock issues and earnings.

Mr. English: That is objected to.

Mr. Miller: That is just what you wanted to know.

Mr. English.

Mr. English: You are asking for an expression of opinion this witness is not qualified to give. There is no objection to his giving all the information he can give with regard to this matter, but we ought to have the information itself and not his opinion in regard to it.

Mr. Miller: This is the information itself which he derived from the tax returns of the corporation.

Mr. English: The point is, Your Honor, the information must speak for itself, and we can all draw our own conclusions as to what it may or may not mean.

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The Commissioner: Do you object to this witness drawing a conclusion as to what it means?

Mr. English: Yes, I do, from this information. It is not sufficient to justify him in the proper drawing of a conclusion, because these figures, as I understand it, merely represent paid-in capital stock during these years, and there is no relation, so far as the evidence has yet developed between it and the estimated original cost of the Red Lion property.

The Commissioner: Do you take that position with reference to the others, the Peoples and the Westinghouse?

Mr. English: Yes, surely.

Mr. Miller: I think certainly, Mr. Commissioner, the witness can give the basis of the opinion which he has expressed on the record.

The Commissioner: It seems so to me, as being his own opinion. It does not become fact, this opinion that he expresses, surely. You have a right to controvert that if you can. I will overrule the objection as to the witness stating an opinion as to what this figure represents, and note an exception for the respondent.

Mr. Miller: That was not my question. I asked Mr. McShea why he said that the Red Lion Electric Light Company had in his opinion financed its property construction in the same manner as he had testified that the Peoples Electric Light Company and the Westinghouse Electric Light Company had.

The Commissioner: That amount to the same thing put in another way.

In other words, Mr. McShea puts down a figure of \$11,650 on this statement, estimated original cost for this company.

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By the Commissioner:

Q. Isn't that so? That is your figure for the original cost of this company? A. That is right.

Q. Now, I ask you to proceed and state what in your opinion that represents? A. Of course, basically that is the amount of paid-in capital stock of the Red Lion Electric Light Company. Now, in the last tax report that we examined for the year 1904 the form required that the various security issues of the company be listed, and the capital stock was shown at \$14,450. That was in 1904, and space was there to show the indebtedness not only for 1904, but for all prior years, and it didn't appear that the company ever had bonds or other substantial debt outstanding, and for that reason I concluded to use the \$11,650 as the original cost of the property, feeling that the money must have come from the issuance of stock with which to build the property.

By Mr. Miller:

Q. Did you say that the tax return of 1904 showed \$11,450?

A. Yes.

By the Commissioner:

Q. 450? A. 1904, it was 450—\$11,450.

By Mr. Miller:

Q. Will you proceed with the York and Windsor Companies? A. Since the York and Windsor Electric Company was formed by merger of the Red Lion Electric Company and three non-operating companies it was evident that it began business in 1905 with the property of the Red Lion Electric Light Company. For that reason I took as the opening original cost for York and Windsor the sum of \$11,650, which I had developed for the Red Lion Electric Light Company. We were unable to find books of the York and Windsor Company for

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a period of years. No books being available prior to October 1st, 1912. There again we were of necessity compelled to rely upon the capital stock tax returns on file with the Pennsylvania Department of Revenue.

Q. What did you find upon the examination of those tax reports? A. The tax reports for 1905 and 1906 contained no information of the cost or value on the property.

By the Commissioner:

Q. 1906 didn't either? A. That is right.

Q. Where did you get the figure of \$60,000 in 1906? A. That is the total amount of some bonds issued in 1906. Bonds were issued by the company in 1906 in the amount of \$60,000.

By Mr. Miller:

Q. From what source did you obtain the information as to the bond issue? A. The York and Windsor Electric Light Company was merged with the Edison Electric Light Company and fourteen non-operating companies in 1913. In examining the details of that transaction we learned that \$60,000 of bonds were issued by the York and Windsor Company in 1906.

Q. Proceed, Mr. McShea. A. According to the tax reports from 1907 to 1913 the capital stock authorized amounted to \$30,000 during the entire period. The space provided for the amount of the paid-in capital stock tax was blank from 1906 to 1911 inclusive. In 1913 the amount of paid-in capital stock is shown at \$30,000. In 1907 the assets are shown as value of property in the amount of \$30,000. \$30,000 was again used in 1908. In the report for 1909 the cost of Red Lion was shown at \$20,000, the cost of equipment at \$15,000, and the real estate and buildings at \$2,000. In 1910 the cost of Red Lion was shown at \$7,000, the cost of equipment at \$7,500, the cost of real estate and buildings at \$1500. Now, in 1909 the property values

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as shown by the capital stock reports changed or decreased from \$37,000 in 1909 to \$20,000 in total in 1910. While personally, I don't think there was a decrease in the cost or the value of the property between 1909 and 1910, so in order to play safe I used the \$11,650 for the entire bond issue in 1906 at \$60,000 and started out with those two figures.

By the Commissioner:

Q. And for a period of five years you used \$71,650? A. Beg pardon.

Q. For six years thereafter you came to a total of \$71,650?

A. That is right.

Mr. English: As I understand the witness' theory when he didn't like the figures he rejected them?

The Witness: I rejected those figures in favor of the company.

Mr. English: I don't mean to be so persistent, but I do say this witness ought to give us the information that he has.

Mr. Miller: He has given you the information that he has.

Mr. English: He should have included it in this report.

The Commissioner: He has testified as to how it got there.

Mr. English: I think we will be entitled to have the tax reports themselves, and perhaps we ought to have them. Now, as long as certain figures are eliminated from this—exhibit—

The Commissioner: I don't know that we can produce the tax reports filed with the Department of Revenue.

Mr. English: Perhaps we have copies.



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The Commissioner: They are available to you.

Mr. English: Oh, yes, surely.

(Discussion at the instruction of the Commissioner off the record.)

By Mr. Miller:

Q. Now, Mr. McShea, just in that connection did you in your final figures reduce any values as taken from the books of these various companies? A. Did I what?

Q. Did you reduce, for example, these figures are frequently carried, the red figures are frequently carried over into the blue figures. Are those blue figures which correspond to the red figures amounts appearing on the books of these various companies?

The Commissioner: They were in the books of the companies.

Mr. English: He said there were no books.

(Remarks by Mr. Miller at his request off the record.)

Mr. Miller: I will withdraw the question.

By Mr. Miller:

Q. Proceed, Mr. McShea. A. In the capital stock tax reports of the York and Windsor Company from 1907 to 1913, a statement of the expenditures of the company was shown for each year. In the space provided to show the amount expended for property nothing was shown until the year 1911, when the expenditures for betterments are shown to have amounted to \$1501.76, and that is the item appearing opposite 1911 on Exhibit 23. The amount shown opposite 1912 is \$6,323.24 and was determined in this manner. The capital stock tax report for the year 1912 shows an expenditure for betterments in the amount of \$1,466.69. Passing that amount for the moment

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until I finish with 1913—the amount of \$440.51 was obtained from the books of the York and Windsor Company. Now, in the merger I think June 1st, 1931, when the York and Windsor Company, the Edison Electric Light Company and fourteen non-operating companies were merged to form the first Edison Light and Power Company, the amount shown on the books of the Edison Light and Power Company for the York and Windsor property was \$79,475.00. Now, taking into consideration the amount shown for 1905 at \$11,650.00, \$60,000 in 1906; \$1,501.76 in 1911, and \$1,466.69 in 1912 and \$440.51 in 1913, I was short in the amount of \$4,856.55, that is short that amount in the amount that was picked up on the books of the first Edison Light and Power Company.

By the Commissioner:

Q. In other words, you added that \$4,000 and some dollars to reconcile for the amount on the books of the Edison Light and Power Company? A. That is right, and I added it all in the year 1912. Of course, I don't know ~~where~~ where it was lost in the shuffle, if it was lost.

By Mr. Miller:

Q. However, your total figure for original cost of York and Windsor Electric Light Company was the figure placed on the books or appearing on the books of the merger you spoke of, so that you took ~~that figure as~~ original cost of the property, is that correct? A. That is right.

Q. Will you proceed? A. I think that is all, isn't it, Mr. Miller. I have been through all the companies.

By the Commissioner:

Q. As to the others, the Edison Light and Power Company, the Merchants Electric Light Company, you took those figures from the books? A. That is right. I would like to say, of

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course, that the Edison Electric Light Company and the Merchants Electric Light Heat and Power Company were by far the largest two constituent companies of the original constituent companies in the present Edison Light and Power Company.

By Mr. Miller:

Q. What is your estimate of the original cost of the property paid for by the respondent or its predecessors? A. \$4,237,105.09. This figure is made up of the \$4,382,647.08 shown by sheet No. 1 of Exhibit No. 23, plus \$9,317.79 representing customers donations still standing as credits to fixed capital, less \$154,859.78 representing donations made by customers and credited to reserve for renewals and replacements.

Q. What is your estimate of the original cost of all of respondent's property including the portion paid for by the customers? A. \$4,504,619.77. This was arrived at by adding the total donated capital amounting to \$267,514.68, as shown by Exhibit No. 22 to the estimated original cost of the property paid for by the respondent or its predecessors in the total amount of \$4,237,105.09.

Q. What was added to that to make your total estimate? A. \$2,067,514.68, that is the total shown by the other exhibit.

Q. What is shown by sheet 2 on Exhibit 23? A. This is a reconciliation of the differences between the undepreciated book value of fixed capital as shown by the books on June 30, 1936, and the estimated original cost as shown by sheet 1 of Exhibit No. 23.

Q. Have you made studies to determine the earnings and dividend records of the original constituent companies of the respondent in the early years of their operations? A. Yes.

Q. Have you prepared an exhibit reflecting the results of that study? A. I have.

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Earnings and dividend record of the Peoples Electric Light Company for the period from May 4, 1886 to October 31, 1893; produced and market Public Service Commission's Exhibit No. 24, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you five statements marked collectively Commission's Exhibit No. 24, and ask you if that is the exhibit to which you have referred? A. It is.

Q. What is shown by sheet 1 of that exhibit? A. This sheet reflects the earnings and the dividend record of the Peoples Electric Light Company for the five years ended in 1893. I was unable to locate any earnings statements from incorporation in 1886 to 1888 inclusive.

Q. Where did you obtain the information shown on sheet 1? A. I obtained the information under column "b" from Exhibit 23, which is my estimate of the original cost. Column "c" is a calculation of 6 percent times the amount shown in column "b". The amounts shown in column "d" were obtained from the capital stock tax reports as were the figures in columns "f" and "g".

By the Commissioner:

Q. Mr. McShea, what is the value of the capital stock at 6 percent on original cost for those years for these companies? Why did you put that in there? What value does that have? Since during those years the Commission allowed 7 percent as a return. A. Well, I only used 6 percent in this case because that is the current rate that is being allowed by the Commission.

Q. What was the purpose of making these calculations on a 6 percent return on these back years? A. To determine the extent if I could, of the lag of earnings of these companies in the early years.

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Mr. Miller: We feel, Mr. Commissioner, that the earnings for these companies may have been 5 percent or 7 percent or might have been 6 percent in these early years. The Commission, of course, was not in existence in 1886 or 1887, but the 6 percent figures was being applied as being a reasonable return in our judgment upon the property.

The Commissioner: I know, but after you got that all figured out what is the value, what is the purpose? That is what I want to know.

Mr. Miller: To show what the income of the companies was and to show how much it exceeded 6 percent.

The Commissioner: To show what the income of the company was?

Mr. Miller: To show what the return was so far as the figures we had indicate.

The Commissioner: You cannot determine by any such calculation what the income for those years of the company was.

Mr. Miller: No, that is true.

The Commissioner:.. You can only determine what the 6 percent return would have amounted to. Whether they earned that or whether they didn't earn that or whether they earned twenty times as much, there is nothing to tell that.

Mr. English: The difficulty as I see it, Your Honor, is that here again we have only assumption based upon another assumption. I am still in a very critical mood with regard to this Exhibit 23 as having anything to do with the original cost of this property. The explanation of the witness, as I stated before is merely from the evidence of the tax returns he took certain data which in the last analysis means nothing more than the paid-in capital, whatever that might mean.

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The Commissioner: That is true as to certain of these figures, not as to all. A large portion of this exhibit was taken from the books.

Mr. English: That is true. I am referring to these early companies. Now, then, we have another assumption upon that, where it is baldly stated that here is 6 percent on undepreciated original cost. I object to the use of that phrase in the light of this evidence. It is perfectly absurd for anyone to say that earnings should have been any definite amount during that time, during the unregulated period, bearing in mind that we didn't have a Commission or even a Commission statute in 1913.

The Commissioner: What I was trying to get at for my own illumination, if possible, is to find out what the value of this Exhibit No. 24 is in this proceeding. Will you please state that.

Mr. Miller: It is to show whether there was any lag in the early years of the company as bearing upon the allowance, if any should be made, by the Commission for going concern value.

The Commissioner: All right.

By Mr. Miller:

Q. I note that on sheet 1 of Exhibit 24 are shown the figures from 1886 to 1894. I believe you testified at the last hearing the Peoples Electric Light Company received its letters patent on January 19, 1891. Why do you show data for the period from 1886 on? A. As I explained this morning I found out since that the first letters patent received by this company were on May 4, 1886.

Q. What is shown on sheet 2 of the exhibit? A. This sheet contains a statement of the earnings and the dividend record of Westinghouse Electric Light Heat and Power Company for the period from October 14, 1892 to October 31, 1902.



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Mr. English: We object to any evidence based upon the assumption contained in Exhibit No. 23, or any testimony with regard to it in the light of the record as it stands at the moment, it being irrelevant, immaterial and incompetent.

Mr. Miller: I certainly think it is competent material and relevant, Mr. Commissioner, the weight to be given to it would be for the Commission to determine. We presented the basis for the computations made there and stated the manner in which the computations were made so that the Commission is perfectly able to determine what particular weight should be given to the exhibit.

The Commissioner: The objection is overruled. Note an exception for the respondent.

By the Commissioner:

Q. Mr. McShea, let me ask you one question. On these five sheets are apparently the same type of computations for these five different companies, is that right, a group of companies? A. You mean all five alike?

Q. In character? A. Yes.

Q. For different years, however? A. That is right. I took the earliest period.

Q. When you say income available for return, are those figures for income for those companies shown by their books?

A. In some cases, and in some cases as shown by the tax reports.

Q. The figure that you took from the tax reports are what figure that you put down in that column? A. The earnings of the company before any payment of interest or fixed charges.

Q. So you either took the exact figure from the books or

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from the tax returns? A. I think there were possibly two cases where I made adjustments.

Q. In what manner did you make adjustments? Is that shown on here? A. No, they are not shown on here. I can get them. It might take a little while to look over the papers.

Mr. English: We certainly want to know all about these adjustments.

The Commissioner: I think it is only the most elementary sort of fairness to show that, because when I asked the question I assumed that the amount of income available for return was an item shown on some definite record. Now, if it is not, if any of these items have been changed from the books or the tax reports of the company then I think they ought to be definitely marked, shown here and explained.

Mr. Miller: We are going to show in detail the sources from which this information was derived, and which figures were used, Mr. Commissioner.

The Commissioner: Particularly where objections were made.

Mr. Miller: We would like to prepare a statement showing in detail the source of the figures presented in the form of a statement rather than putting it on the record.

The Commissioner: I think that will save time.

Mr. English: That is agreeable to us, so far as it means anything or is useful.

By Mr. Miller:

Q. In general, Mr. McShea, from what source did you derive the information in Exhibit No. 24? A. From the books in some cases and in other cases from the capital stock tax reports.

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Q. When you say books, do you mean the books of account or the minute books? A. The books of account.

Q. The general books of account of all the five companies were not available from the dates of their incorporation? A. That is right.

Q. There were no books or records of the Peoples Electric Light Company except for a short period in 1888 and 1889. There were no books available for the Westinghouse Company—

By the Commissioner:

Q. Then for the other years, for the definite years that you have there, those are from the books and records? A. That is right.

Q. All right. A. There were no books available for the Westinghouse Company prior to January 1, 1901.

Q. And all the rest of the figures there were taken from the books and reports? A. That is true.

By Mr. Miller:

Q. How far back did you have accounting records of the Edison Electric Light Company? A. The records of the Edison Electric Light Company I believe they went all the way back to the beginning, except that there might be an open period of a few months at the very beginning where they only had possibly a cash book or something like that.

Q. Is the Edison Electric Light Company the largest of these five companies? A. It is.

Q. Now, the Merchants Company, the second largest, how far back did those books go? A. Those books ran all the way from 1900 the time of incorporation to 1915. With respect to the Red Lion Company there were no books for that company for any period.

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Mr. Miller: We propose to submit a detailed statement, Mr. Commissioner, showing exactly where they came from.

By Mr. Miller:

Q. Mr. McShea, on which page of this exhibit—the third column is headed “Average Undepreciated Original Cost,” that is your estimate of undepreciated original cost, is it not?

A. That is right.

Q. Now, have you prepared a statement of the charges to Public Service Commission Account No. 558, renewals and replacements during the five and a half year period ending June 30, 1936? A. I have.

Statement of charges to Public Service Commission Account 558, renewals and replacements, for the period from January 1, 1931 to June 30, 1936, produced and marked Public Service Commission's Exhibit No. 25, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you one sheet marked Commission's Exhibit No. 25, and ask you if that is the statement referred to? A. It is.

Q. What type of expense is covered by account 558? A. Depreciation of the property.

Q. What was the basis of computing annual depreciation during the five and a half year period? A. In 1931 and 1932 the annual amount for depreciation was computed upon the basis of 12½ percent of the gross operating revenue.

By the Commissioner:

Q. Mr. McShea, just so we have it clear, are these figures taken from the company's books or your calculation of what

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they should be? A. These figures are all taken from the company's books.

Q. As they are, without adjustment? A. That is right. At least the result is shown on lines 1 and 8, which are the amounts charged to account 558 renewals and replacements by the company.

Q. You mean the exact amount is listed here? A. That is right, plus amounts received from York Steam Heating Company for steam delivered to the Steam Heating Company less maintenance from January 1, 1933 to June 30, 1936. The basis of computation was the same but the rate applied to the gross revenue plus some credit was 10 percent.

By Mr. Miller:

Q. Then the effect of that is that the current total charges to income for the items of maintenance and depreciation were equal to 12½ percent of the gross revenue plus some credit during 1931 and 1932 and 10 percent during 1933, 1934, 1935 and six months of 1936, is that correct? A. That is right.

Mr. Miller: We are not prepared at this time to present testimony as to operating expenses, and we would like to have an opportunity to do that at a later time. In addition to the operating expense testimony the only thing the Commission has to present in support of its case in chief is the detailed statement in support of Exhibit No. 24. Now, if the respondents desire to cross examine any of the gentlemen who have so far testified in the case, they are at liberty to do so.

Mr. English: I think, Your Honor, we could really save time by having an opportunity of examining the record and particularly having these exhibits checked before cross examination.

The Commissioner: I, of course, want to give the

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company every reasonable opportunity for checking and going over all of these exhibits. Of course, on the other side I am anxious to expedite this matter. I don't want to have this case drag along unnecessarily. I just wondered whether it would be possible or feasible to cross examine on the exhibits that were submitted at the first hearing, or wouldn't that be feasible.

Mr. English: We have not had an opportunity to confer among ourselves with regard to that matter, your Honor. We have no disposition to prolong the case.

The Commissioner: Of course not, and I don't mean to insinuate that on your part. I don't want to set up a situation which would delay the matter at all.

Mr. English: My thought is that, of course, we will want these figures verified and our tendency would be to confine cross examination to matters that really need clarification, and not to simply spend a lot of time asking unnecessary questions.

The Commissioner: Then as I understand it we could expedite matters in the long run by giving you an opportunity to examine these twenty-five exhibits before proceeding with cross examination.

Mr. English: Exactly so.

Mr. Miller: That is perfectly satisfactory to us, Mr. Commissioner.

The Commissioner: That would mean, of course, that you would require more than today to examine these exhibits, so we could not go ahead tomorrow in that case.

Mr. English: Oh, yes.

The Commissioner: How long would you need reasonably, Mr. English, to accomplish that purpose?

Mr. Miller: I might state, Mr. English, that we have



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no more exhibits to present except that detailed statement in support of Exhibit No. 24, so that you won't be emboarrassed by more exhibits.

Mr. English: That is helpful. I was just asking Mr. Downes his idea as to the time that will be required for the study that is being made of the allocation of plant which has become, as your Honor will agree, a somewhat important element in this case. It is going to be difficult to cross examine Mr. Palmer, for instance, until we have had the benefit of our own study along the same lines. Now, that is going to take some little time to do, and I should hate to commit ourselves to a definite date just now, but the study is being made and with the utmost speed.

The Commissioner: Of course, the company has had long notice of the possibility of this hearing, certain definite notice for a number of weeks before the previous hearing a month ago. Certainly some of that study has already been made in the preparation of your case.

Mr. Downes: We started on that. What we are doing is bringing the whole matter down to date, June 30th.

Mr. English: We will be ready to go as far as we can at the next hearing whenever your Honor sees fit to fix it with the cross examination of these witnesses.

The Commissioner: Would you be able to proceed with your cross examination, we will say, in two weeks?

Mr. English: Oh, I should think so. We may not have that study complete in two weeks, but so far as cross examination is concerned we can go ahead.

Mr. Miller: Mr. Commissioner, it will take us approximately two weeks to analyze the operating expenses so that Mr. McShea can testify as to those. The Commission's staff has been working as hard as it could on

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this. It has been a very large job, and of course, as you know, the staff has had a good many other things to do at the same time.

The Commissioner: We will say along about the 10th of December, along there. I don't know what day of the week that falls. I think that will be practically three weeks from now. Say the 9th of December, Wednesday the 9th.

Mr. English: We will be prepared to go just as far as we can at that time.

The Commissioner: Now, Mr. English, just one word further before we adjourn for the day. The question I asked you this morning, in reply to it, you stated that your figure was something I think in excess of eight million dollars, did you not?

Mr. English: That is correct.

The Commissioner: Now, that figure certainly is made up of the properties of the Edison Light and to some extent of the Steam Heating Company, isn't it?

Mr. English: Yes, surely.

The Commissioner: Of that eight million dollars how much is represented directly in your figures by the Edison Light and Power Company property that it owns in dollars? Can you tell that?

Mr. English: I can only speak in very round figures.

The Commissioner: Yes, without committing you to anything definite.

Mr. English: Something in the neighborhood of six million dollars.

The Commissioner: And the other is a combination of the other two?

Mr. English: Right, the portion of the property that

*Colloquy*

we think the Commission should consider in the rate base here.

The Commissioner: We will adjourn here today and set the date for hearing definitely as the 9th and 10th of December.

Mr. English: As a matter of fact, Your Honor, I am sure that no time is being lost by these adjournments.

The Commissioner: I take it there is not. We must have time for the preparation of these additional exhibits, and you certainly must have time for the study of those exhibits.

Hearing Adjourned.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Service Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER,  
Official Reporter

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Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Peansylvania, Wednesday, December 9, 1936.

Commissioner STAHLNECKER, presiding.

APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa. for the Public Service Commission, Complainant

V. G. KEESEY, Esq., York, Pa.

CHARLES H. ENGLISH, Esq., Erie Pa. and

J. HARRY LABRUM, Esq., Philadelphia, Pa. For the Respondent

R. A. MCSHEA, JR., a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

*Direct Examination*

Mr. Miller: I will recall Mr. McShea for the purpose of placing in evidence certain supporting data which was referred to at the previous hearing in the form of exhibits.

Details of computation on estimated original cost of property of the Peoples Electric Light Company for the period from May 4, 1886 to April 11, 1894, produced and marked Public Service Commission's Exhibit No. 26, E. E. M., 12/9/36.

Statement of income available for return, of the Peoples Electric Light Company as reflected in capital stock tax returns and as adjusted for the fiscal years ended the first Monday in November from 1889 to 1893 inclusive, produced and marked Public Service Commission's Exhibit No. 27 E. E. M., 12/9/36.

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Mr. Miller: Exhibit No. 26 is the details of computations on estimated original cost of property of various constituent companies of respondent, giving the source of the information and various details relative to the securing of information and the information itself.

Exhibit No. 27 is a similar statement related not to original cost, but to income available for return of the constituent companies.

by Mr. Miller:

Q. Is that a correct statement of the contents, Mr. McShea?  
A. It is.

Q. Do you desire to make any further explanation of these exhibits, Nos. 26 and 27? A. No sir.

Q. Mr. McShea, have you any corrections to make in your testimony given so far in this proceeding? A. I have corrections to make, typographical errors, I believe.

Q. Will you state what these corrections are? A. Page 169 first answer—The date “May 4, 1896” should read: “May 4, 1886”.

Page 175 first answer—fifth sentence—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 175 third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 176 first paragraph—first sentence—The date “May 4, 1896” should read: “May 4, 1886.”

Page 177 first question—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 177 second answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 177 third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

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Page 181 first answer, second paragraph—The amount "\$3,277.33" should read: "\$3,227.33."

Page 182 third question—"Edison Light and Power Company" should read: "Edison Electric Light Company."

Page 182 fourth answer—The word "day" should be "date."

Page 194 fourth answer, fourth sentence—The words "Red Lion" should read: "road or line."

Page 195 first answer, second sentence—The words "Red Lion" should read: "road or line" and the amount of "\$7,000" should be "\$11,000."

Page 195 first answer, third sentence—The phrase "I used the \$11,650 for the entire bond issue in 1906 at \$60,000" should be changed to "I used the \$11,650, and the entire bond issue in 1906 of \$60,000."

Page 197 last answer, fifth sentence—the date "June 1, 1931" should be "June 1, 1913."

Page 208, third answer—The date "January 1, 1901" should be "December 31, 1901."

By the Commissioner:

Q. They are all typographical errors, the corrections, are they not? A. That is right, and the changes of amounts and dates.

Mr. English: Those are the formal corrections of the witness' testimony.

The Commissioner: They are corrections of typographical errors.

Mr. English: There might be some others we might like to make.

Mr. Miller: We are glad to make these corrections, we might not be so pleased to make those later on.

The Commissioner: Assuming that Mr. English can show there is anything wrong?



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Mr. Miller: We will be delighted, of course.

The Commissioner: The typographical corrections to be made according to this sheet will be put in the record and the record corrected to this extent.

By Mr. Miller:

Q. Mr. McShea, have you completed your analysis of the operating expenses shown on Exhibit 6, and Exhibits 9 to 14 inclusive, covering the five and a half year period from January 1, 1931 to June 30, 1936 inclusive? A. I have completed my work on those exhibits.

Q. What comments have you as a result of this analysis? A. I have no further comments with respect to Exhibit 6 or 9. Exhibit 10 is a statement of the distribution system expenses as shown by the books. In the analysis of these expenses it was found that respondent charged to maintenance at various times the cost of materials included in the poles, cross arms, and so forth, and the labor cost of removing old poles and installing new poles. The uniform classification of accounts for electric companies does not permit a company to charge the cost of installing new property to operating expenses through the maintenance account.

For example, the first paragraph of P. S. C. Account No. 458, maintenance of poles and fixtures, reads as follows: "Charge to this account the cost of Labor employed, materials and supplies consumed and the expenses incurred by the utility in making repairs to the poles and fixtures of its distribution system."

In attempting to determine the extent of the charges to this account for new property installations, we made an analysis, a test analysis for the month of November, 1935. The total charges for that month amounted to \$2,040.75 made up as follows:

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Cost of 50 poles of various lengths from 20 to 40 feet .....	\$408.99
Labor cost .....	886.14
Other materials and supplies .....	615.89
Cost of operating automobiles .....	85.45
Miscellaneous .....	44.28

The labor cost was analyzed and it was found to be impossible to determine from the records the cost of labor properly applicable to maintenance and the amount applicable to new fixed capital, or the cost of removing old fixed capital. However, it was determined in our study that the total labor cost of \$886.14 did include substantial amounts representing cost of removing old poles and the cost of installing new poles, neither of which should be charged to maintenance.

We made no detailed analysis of the item of other materials and supplies amounting to \$615.89.

The cost of operating automobiles amounting to \$85.45, or the miscellaneous expenses amounting to \$44.28, no detailed analysis was made.

Q. Then the records of the company did not contain data which enables you to state the extent to which the cost of maintenance is over-stated from the books for any of the periods covered by Exhibit 10? A. I believe that is correct, yes.

Q. Does this condition apply to all of the maintenance accounts of the respondent including production, transmission and utilization systems, as well as distribution system? A. I don't know about that for the reason that no analyses were made of the maintenance accounts for any but the distribution system.

Mr. English: Then I take it, Your Honor, that the assumption that there has been any kind of over-statement is hardly justified.

The Commissioner: There is no assumption as to—

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Mr. English: Except in the question of counsel.

The Commissioner: You mean as to whether there is evidence of the figures being too much in any of these items, in any of the other accounts that he has not analyzed.

Mr. English: Exactly so.

Mr. Miller: The only account we analyzed showed that the figures were high.

The Commissioner: Well, the figures may be high for that account, but he says that he has not examined the others.

Mr. Miller: That is correct.

The Commissioner: The inference that is in anybody's mind cannot be helped. It is not going to be accepted by the Commission until an examination is made.

Mr. English: From our viewpoint, Your Honor, the others are matters of judgment.

The Commissioner: The witness' definite information from this analysis of these records is that these figures are too high.

The Witness: The only thing I had in mind in answer to this question is that I don't want anybody to think that I want my answer to Account 458 to apply to all the other departments, production and transmission. I want it clearly understood that I was speaking only of distribution when I was speaking of improper charges to maintenance accounts.

Mr. English: I think the witness is only expressing his own judgment in all fairness.

The Commissioner: He is expressing his opinions of the requirements of the uniform system of accounts, not only his opinion, but which he believes thoroughly have not been met.

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Mr. Miller: With reference to the account examined he has testified as to the results of that examination.

The Commissioner: Exactly. I don't think it is a question of opinion there. It is a question of fact in his judgment.

Mr. English: Of course, that is something we will discuss later. We think it is entirely a matter of judgment.

The Commissioner: You will have an opportunity to rebut that at the right time.

By Mr. Miller:

Q. Mr. McShea, you were able to make an analysis of any of the maintenance accounts applying to other systems than the distribution system? A. Well, we would have been able to, but we didn't get into it.

Q. Did you do it in fact? A. We didn't.

Q. Why? A. To make a proper analysis of the maintenance accounts of an electric company the size of this one would require a great deal of time. As a matter of fact it took one man about four weeks to make an analysis of Account 458 for one month, and then we didn't get the proper answer. We did find out—

By the Commissioner:

Q. What do you mean by not getting the proper answer? A. Well, I was not able to definitely segregate labor between maintenance labor and fixed capital labor.

Q. In other words, you were not able to resolve all the figures in that account in the time you had? A. That is right.

Mr. English: I think we both agree as to that.

By Mr. Miller:

Q. Was that because the information in the files of the company was not sufficient for ready analysis of the account?

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A. We were able to definitely ascertain the cost of the new poles charged to the maintenance accounts. We were not able from the records, or with the help of the office staff to make a segregation of the labor cost.

By the Commissioner:

Q. I think in fairness to the company at that point, would that be true of any electric company, who had their books set up as this company had? A. That is true of some other electric companies.

Q. In other words, what I am trying to clear is there was no obstruction to your analysis by the company? A. That is right.

By Mr. Miller:

Q. Would it be possible, Mr. McShea, to go into the files of some electric companies and obtain information which would permit you to break down the figures similar to these?

Mr. English: I submit that is objectionable, Your Honor, so far as this case is concerned.

Mr. Miller: We will withdraw the question.

By Mr. Miller:

Q. Mr. McShea, what did you examine, what data in the company's files did you examine in connection with your analysis of the distribution system maintenance accounts? By that I mean, did you examine the time tickets, or did you examine the work sheets or the bills? A. In the cost of labor I examined, I believe, all the time tickets for the month. In the case of poles we were able to get that without going back into the original records. The company's employees in the office I believe had a schedule of the poles which they submitted to us.

Q. Then in some cases you could get the data from some

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source, and in some cases you had to go back to the original records and make that summary yourself, is that correct? A. That is right.

Q. What comments do you desire to make in connection with Exhibit No. 11? A. I have no further comments on this exhibit.

Q. With respect to Exhibits 12 and 13? A. The only additional testimony I have relating to these exhibits concerns the manner in which expenses common to two or more of the affiliated companies in the York group, consisting of York Railway's Company, York Bus Company, York Steam Heating Company, Glen Rock Electric Light and Power Company, Glen Rock Ice Company and Edison Light and Power Company were allocated to the various companies. In 1931, 1932 and 1933 the common commercial department and the new business department expenses were allocated among the Glen Rock Electric Light and Power Company, York Steam Heating Company and the respondent to the exclusion of the York Railway's Company, the York Bus Company and the Glen Rock Ice Company. These allocations were made monthly and were upon the basis of the operating revenues of the respective companies. The amounts allocated to respondent in these three years on this basis, together with a few minor items charged direct to respondent and not allocated are reflected in columns "e", "f" and "g" of Exhibits 12 and 13.

In 1934, 1935 and 1936 the commercial and new business department expenses shown by columns "h", "i", "j" and "k" of Exhibits 12 and 13 reflect the result of the application of respondent's policies since January 1934 of an attempt to more accurately distribute expenses among the companies involved. In the case of salaries and wages the distribution purports to be upon the basis of a time study. In the case of supplies an attempt was made to make the distribution upon the basis of charging the companies involved in more or less direct proportion to the actual benefits received by them.



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Q. Do you have any further comments in relation to Exhibit 14? A. The testimony I just gave with respect to Exhibits 12 and 13 applies also to Exhibit 14, except that all of the companies in the York group, namely, the two Electric Companies, the Steam Heating Company, the Ice Company, up to the end of 1933 and the York Railways Company and the York Bus Company participated in the general administrative expenses.

By the Commissioner:

Q. Mr. McShea, just turn to Exhibit 13. I notice that there are quite a number of items in the first six months of 1936 under "k", such as salaries, canvassing domestic sales, canvassing rural sales and so forth, all these items are charged entirely to the electric company: there is no charge to the York Railways of items of that kind, is there? A. Yes, in 1936 there were no general allocations in 1936. They made the segregation of costs in 1936 upon the basis of actual time spent as nearly as they could determine.

Q. I mean, these particular accounts, whatever was paid for that kind of work was charged to the Edison Light and Power or the Glen Rock, I suppose, wasn't it? A. That is right.

Q. There was no charge to the York Railways or Bus Company for such purposes? A. That is right, but I think there was something charged to the York Steam Heating Company. Not in connection with electric activities, of course.

Q. No, of course, those were charged entirely to the Electric Companies? A. That is right.

Q. Perhaps I misunderstood what you said earlier.

By Mr. Miller:

Q. Now, do you have any comments with respect to Exhibit 15? A. As to the allocation of the general expenses as reflected by this Exhibit the testimony I just gave in connection with Exhibit 14 applies to the same extent to this Exhibit 15. However, I wish to call attention—

*R. A. McShea, Jr.—For Complainant—Direct*

By the Commissioner:

Q. You said expenses on Exhibit 15. The exhibit I have here is operating expenses, is that right?

By Mr. Miller:

Q. That relates to Exhibit 14, doesn't it, Mr. McShea?

The Commissioner. I think you just had the number wrong when you said 15. 14 is general expenses.

The Witness: In any event I am now talking about Exhibit 14.

By Mr. Miller:

Q. Are you speaking of Sheet 1 or Sheet 2 of Exhibit 14?

A. Sheet 2 of Exhibit 14.

The Commissioner: After the record is compiled I think we ought to have it exactly.

By Mr. Miller:

Q. Is your prior testimony applying to Exhibit 14 concerning only Exhibit 14? A. That is right.

Q. Now, you are taking up Sheet 2 of Exhibit 14? A. That is right.

Q. Proceed. A. I wish to call attention to the amount shown by P. S. C. Account 541 on Sheet 2 of Exhibit 14, at lines 23 and about 33. Account 541—

By the Commissioner:

Q. 541, doesn't that start with line 41 on here? A. Well, that line 41 happens to be a total of everything appearing here.

Q. Starting from 17, is that right? A. That is right.

Q. Lines, what did you say? A. The lines—the amounts constituting lines 23 and 33, you see they are—

Q. Yes.

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The Witness: It will be noted that although Edison System accounts are shown in columns "a" and "b", there are no account numbers. The amounts are grouped in columns "c" and "d". This is due to the fact that the respondent only had groups of accounts instead of separately for the years 1931-33. I have prepared a statement showing how this was done for the charges to this account.

Analysis of portion of charges to P. S. C. Account No. 541—other general expenses for the period from January 1, 1931 to June 30, 1936, produced and marked Public Service Commission's Exhibit No. 28, E. E. M. 12/9/36.

By Mr. Miller:

Q. I show you a paper identified as Commission's Exhibit No. 28, and ask you if that is the analysis that you have mentioned? A. It is.

Q. Do you wish to call the Commission's attention to any of the items on this exhibit? A. Yes, on lines 13 and 14 appear charges, beginning in 1933 for payments to Harry Reid and Company, Inc., for management service. These payments began in August of 1933, the month in which payments to Penn. Central Light and Power Company at Altoona were discontinued.

Q. What was the basis for these payments? A. In August 1933 and up to November 1934 inclusive the payments were at the rate of one-half of one percent of gross revenue, plus one percent of the net earnings of the respondent. Beginning in December 1934 and continuing to June 1936 the flat rate of \$1700 per month was paid by the York Companies as a group. Of this amount 80 percent or \$1360 per month has been borne by respondent.

Q. Is the respondent affiliated with Harry Reid and Company, Inc.? A. I don't know.

*R. A. McShea, Jr.—For Complainant—Direct*

By the Commissioner:

Q. What was this for? What were these charges for? A. Management service. Beyond that I have no details.

Q. Management service may mean a lot of things. You don't have any details as to what service was rendered? A. No, I don't.

Mr. Miller: If the two companies are affiliated, Mr. Commissioner, a copy of the contract for management service should be on file with the Commission.

The Commissioner: If they are affiliated.

Mr. English: I think I am justified in saying they are not, Your Honor.

Mr. Keesey: The contract was entered in evidence in one of these proceedings.

The Commissioner: My recollection is that it was offered in the merger proceeding, that is, the contract.

Mr. Miller: Mr. Commissioner, I will offer by reference the contract presented in the merger proceedings for this record.

The Commissioner: It will be admitted by reference.

Mr. Keesey: I am quite sure it is in one of the proceedings, and I am quite sure it is in the original merger proceeding.

Mr. Miller: If you offered it in the merger proceeding, there is no objection to having it in this proceeding.

Mr. English: Not a particle.

The Commissioner: I take it there is no objection on the part of the company even if it is not in the record.

Mr. English: We will be very glad to submit a copy.

By Mr. Miller:

Q. At the first hearing, Mr. McShea, you testified with reference to the matter of the respondent's annual tax liability—

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The Commissioner: Excuse, Mr. Miller, but I am interested in one item on this Exhibit 28, at line 3.

By the Commissioner:

Q. What is, "goodwill advertising and publicity"? What does that mean, roughly four to five thousand dollars a year? What does goodwill advertising mean? A. I am afraid you will have to ask the company to answer that.

Q. Do you know what it covered? A. I have made no detailed analysis of that item.

The Commissioner: The words, "goodwill" would intrigue me.

Mr. English: I should say, Your Honor, that it is something on which the utilities stand in peculiar need at the present time.

The Commissioner: Then I will try to get information as to that from the company at the proper time.

Mr. Miller: We hope to get information on a good many of these items, Mr. Commissioner.

Mr. English: Mr. Downes has suggested, Your Honor, that usually concerns Community Chest contributions and that sort of thing.

The Commissioner: I thought it did, but I would like to know.

The Witness: I don't have the contributions paid in that item. I think they are on line 12, the item, "donations" up to the end of 1933, and after that in line 33.

The Commissioner: Miscellaneous general expenses. However, we can develop that later.

By Mr. Miller:

Q. Mr. McShea, in your testimony relating to annual tax liability did you omit any items? A. I did.

*R. A. McShea, Jr.—For Complainant—Direct*

By the Commissioner:

Q. What exhibit are we on now? Still on 14? A. This was not an exhibit; it was testimony.

Mr. Miller: My question refers to the general testimony submitted by Mr. McShea, not in exhibit form at the first hearing.

The Witness: I failed to mention that under the provisions of Title 9 of the Social Security Act which became—

By the Commissioner:

Q. You mean the Federal Security Act? A. That is right. The respondent is liable for unemployment insurance payroll tax. The tax became effective January 1, 1936 at the rate of 1 percent on the payrolls.

Q. The tax became effective when? A. January 1, 1936 on payrolls of the company. I am speaking now of Title 9 of the Social Security Act. The rate will be 2 percent in 1937 and 3 percent in 1938 and thereafter. In the first six months of 1936 this tax amounted to \$1562.20 as shown by line 3 of Exhibit 14.

Under Title 8 of the same Act provision was made for a tax to be used for the purpose of setting up a national old age pension system to which both employers and employees will contribute. This tax will become effective January 1, 1937 at the rate of 1 percent on the payroll, but it will not apply to wages in excess of \$3000 per annum.

Q. You mean by that it will not apply to any employee on the part of his compensation that is above \$3000? A. That is right.

Q. There will be a tax up to \$3000? A. That is right.

Q. There will be a tax up to \$3000? A. That is right.



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By Mr. Miller:

Q. Does any such salary amount limitation apply in Title 9 of the Act? A. No. The rate will be 1 percent for three years to the end of 1939; for the next three years it will be  $1\frac{1}{2}$  percent, and will increase  $\frac{1}{2}$  percent each three years until the maximum of 3 percent is reached in 1949.

The Commissioner: However, you are discussing something now which has not yet happened.

Mr. Keesey: The law has been enacted.

The Commissioner: I know, but I thought he was discussing now items on the company's books. Why are you discussing expenses that are to be imposed on the company?

Mr. English: I think that he testified on the theory that rate making is a prospective—

The Commissioner: I am asking him.

Mr. English: I am answering for him.

The Commissioner: Let the witness answer.

The Witness: I am giving this for the reason that we can hardly have this case finished by the end of this year, and we will be fixing rates for the future, which determination probably won't be made until the end of 1937—

By the Commissioner:

Q. A determination will be what? A. A determination in this case will probably be made some time near the end of 1937.

The Commissioner: It will be a long time to the end of 1937 as far as I am concerned with it. You mean the final determination if it goes to an appeal.

The Witness: That is right.

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Mr. Miller: Which we are afraid of, Mr. Commissioner.

The Commissioner: I am not afraid of it.

Mr. English: Nor are we, Your Honor.

By Mr. Miller:

Q. What, Mr. McShea, did the donations to various welfare and charitable organizations amount to for 1934, 1935 and the first six months of 1936? A. In 1934 those donations amounted to \$2750; in 1935 \$2800, and in the first six months of 1936 \$2140.

Q. Have you any further comments or corrections on or in your testimony? A. There are one or two items in my mind that I would like to correct. At the last hearing I believe I said that the Red Lion Company had no indebtedness up to the time they sold out to the York and Windsor. I found out since that, looking over the records in the office of the Secretary of the Commonwealth, that they filed some kind of paper relating to the issuance of some indebtedness I think in the amount of between two and three thousand dollars. I can get the exact amount if you want it.

Q. Is that all? A. I also found that I neglected to mention at the last hearing that the Peoples Company which applied for letters patent in Pennsylvania in 1886 was a continuation of a corporation which originally had been incorporated in West Virginia. Of course, I have no information at all on that company. I think that is all at this time.

Mr. Miller: Mr. Commissioner, I would like to withdraw Mr. McShea at this time and present some correcting testimony, formally correcting testimony, by some of the other Commission witnesses, and then Mr. McShea will be available for cross examination.

The Commissioner: Very well, proceed.

*H. Root Palmer—For Complainant—Direct*

H. ROOT PALMER, a witness called in behalf of the Public Service Commission, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miller:

Q. Mr. Palmer, have you any change to make in the amounts allocated to electric and steam properties. The amount allocated to the electric property being \$841,323, and the amount allocated to the Steam Company being \$507,117, which allocations appear on Sheet 10 of Exhibit 18? A. I have. After certain adjustments in land allocations on Sheet 1, and building allocations on Sheet 2, the amount of \$841,323 allocated to electric property would be \$841,216, and the amount \$507,117 allocated to steam property would be \$507,224. A decrease of \$107 in the electric allocation and an increase of \$107 in the steam property allocation.

Q. Why did you find it necessary to make those adjustment and land allocations? A. The changes were caused by revision of the areas in square feet of the subdivisions of the property between Gas Alley and Philadelphia Street, and from North Park Alley to the Railroad, as shown on Schedule 1, Exhibit 18, and the effect of the land revision on the structures that were allocated between electric and steam property.

By the Commissioner:

Q. The percentage of change is very very small. \$107 out of \$800,000? A. That is all.

By Mr. Miller:

Q. What figures on Sheet 11 must be changed as a result of the changes on Sheet 10? A. Sheet 11 the amount of \$841,323 allocated to the electric property would be \$841,216,

*H. Root Palmer—For Complainant—Direct*

a reduction of \$107; and the amount of \$507,117 allocated to the steam property would be \$507,224, an increase of \$107.

The Commissioner: Wherever it appears in this whole exhibit, \$841,323 would be changed accordingly, wouldn't it?

Mr. Miller: Yes, but depreciation and interest enter into that later on.

The Witness: On Sheets 12 and 13, Sheet 12 applying to depreciation, in comparison with page 32 of the Day and Zimmerman appraisal amounting to \$841,323 new, and \$712,201 depreciated, allocated to the electric property, would be \$841,216 new and \$712,086-depreciated.

By the Commissioner:

Q. In other words, the figure changes to the extent of \$107?

A. Electric property allocation of \$107 new and \$115 depreciated.

By Mr. Miller:

Q. Is the same change of \$107 new and \$115 depreciated necessary on Sheet 14? A. Yes sir.

Q. And the same change should be made in the comparable figures on Sheet 1, is that correct? A. It is.

Q. Now, will you explain the basis of the allocation of land areas as shown on Schedule 1?

The Commissioner: Of exhibit what?

Mr. Miller: Exhibit 18.

The Witness: The areas of the subdivisions shown on Schedule 1 were taken from the Day and Zimmerman appraisal based on the gross floor area for turbine room, new and old boiler rooms, rotary and bus rooms and the operating office and store room, a field inspection and blue prints of the property showing the dimensions. A

*H. Root Palmer—For Complainant—Direct*

check of the allocations as shown on Schedule 1 showed that the sum of the areas of the subdivisions as used was in excess of the area of the total property. The areas of the subdivisions were used as a percentage of the total of this property, as appraised by Day and Zimmerman of \$30,250. The use of the greater area subdivisions as a percentage of allocation did not affect the Day and Zimmerman appraisal of \$30,250 for this property but did affect the amount allocated between the subdivisions.

By Mr. Miller:

Q. Have the allocations been checked on the basis of the adjusted areas? A. They have. Based on the building dimensions in the Day and Zimmerman appraisal shows 28,718.56 square feet built up area, open area adjoining the turbine, rotary and bus rooms of 797.12 square feet area, driveway, walkway and parking of 6,308.81 square feet, making a total of the subdivisions of this property of 35,824.49 square feet, or say 35,824 square feet. The Day and Zimmerman appraisal, Page 205 gives the dimensions of this property which shows 35,810.838 square feet actual or say 35,811 area. This is a difference in the total area of this property based on the sum of the building areas and the actual area of the property of 13.65 or say, 13 square feet, the actual area being 13 square feet less than the sum of the building area basis.

Q. Can you account for this difference of approximately 13 square feet? A. This difference of 13 square feet may be accounted for by the difference between the length of the operating office and store room, Account 279 Page 407 of the Day and Zimmerman appraisal of 119.75 feet and the land measurement Account 204 Page 205 of the appraisal of 119.32 feet an excess in building area over land area of 13.65 or say, 13 square feet.

Q. What is the result of the allocation of the property

*H. Root Palmer—For Complainant—Direct*

based on the revised areas of the subdivision? A. After adjustments in land allocation on Sheet 1 Exhibit 18 the amount of \$25,630 and the amount of \$16,274 allocated to steam property would be \$16,430, an increase of \$156 in the electric property allocation at an increase of \$156 in the steam property allocation. There is no change in the total amount for the property of \$42,060 as shown in the Day and Zimmerman appraisal.

Q. Did this revision of land allocations result in any change in the allocation of structures to the electric and steam properties? A. Only in the item of paving, roadways, walkway, sewage system and so forth of \$5,727, Page 222 of the Day and Zimmerman appraisal. The revision of land areas of the subdivisions on Sheet 1 changed the amounts on Sheet 2 allocated to electric property of \$2,989 to \$3,038 and to steam property of \$2,738 to \$2,689, an increase in the electric property allocation of \$49 and a decrease in the steam property allocation of \$49. There is no change in the total amount in the Day and Zimmerman appraisal.

Q. What was the amount of the total change as a result of the revision of the areas of the subdivisions of land? A. There has been no change in the amount of \$1,348,440 as shown in Day and Zimmerman appraisal. There is a total change in the amounts allocated to electric and steam property as shown on Sheet 10 of \$107. The electric allocation being decreased by \$107, and the steam allocation increased by the same amount, \$107.

Q. Have you prepared revised sheets of Exhibit 18, Sheets 1, 2, 10, 11, 12, 14 and 16, showing the changes which you have testified to? A. I have.

Schedules showing revisions in corresponding sheets of Exhibit 18, produced and marked Public Service Commission's Exhibit No. 29, E. E. M., 12/9/36.



*L. C. Bierman—For Complainant—Direct*

By Mr. Miller:

Q. I ask you if that exhibit consists of schedules showing revisions which you have testified should be made in corresponding sheets of Exhibit 18? A. It does.

Q. Have you anything further to state with reference to your testimony, Mr. Palmer? A. I have not, except on Page 94 of the testimony the typographical error, the word "next" has been shown instead of the word "net".

Q. The word should be what? A. It says "next". it should read "net".

Mr. Miller: I will withdraw Mr. Palmer at this time and call Mr. Bierman.

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L. C. BIERMAN, a witness called in behalf of the Public Service Commission, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miller:

Q. Mr. Bierman, in view of the revision made by Mr. Palmer in his figures has it been necessary for you to prepare a revision of your summary as shown in Exhibit 21? A. It has.

Q. Have you prepared such a revision? A. I have.

Summary of reproduction cost estimate as of June 30, 1934 from Page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from Accounts 204-215, inclusive, for property used for steam production, property not used or useful, and property used exclusively for York Railways Company, and with adjustments in allowance for indirect costs, produced and

*L. C. Bierman—For Complainant—Direct*

marked Public Service Commission's Exhibit No. 30,  
E. E. M., 12/9/36.

By Mr. Miller:

Q. I show you a sheet marked Commission's Exhibit No. 30, and ask you if that is the sheet which you prepared? A. It is.

Mr. Miller: This Exhibit 30 should be substituted for Exhibit No. 21.

The Commissioner: Not substituted, but Exhibit 30 is a correction of Exhibit 21.

Mr. Miller: Well, Exhibit 30 shows all of the figures shown on Exhibit 21 and embodies certain corrections in the Exhibit 21 figures.

The Commissioner: You are not suggesting that we take out Exhibit 21 and put this in instead, are you? Leave them both in, otherwise it would leave a gap in the sequence of the exhibits.

The Witness: In addition to the correction made in line with Mr. Palmer's previous testimony there was a mathematical correction in regard to applying the cost of financing of three percent to reproduction cost less accrued depreciation which is shown on this schedule.

By Mr. Miller:

Q. Then Exhibit 30 embodies that change as well as the changes necessitated by Mr. Palmer's recomputations? A. That is right.

By the Commissioner:

Q. As a matter of fact these changes are very small in amount? A. That is right.

Q. In other words, they are almost infinitesimal? A. Yes.

*L. C. Bierman—For Complainant—Direct*

Mr. Miller: At this time I desire to offer Commission's Exhibits 1 to 30 in evidence.

Mr. English: I cannot tell offhand how many of these exhibits are computations. I am not asking the gentleman to offer them individually, but I do have in mind that most of Mr. Palmer's exhibits have comments on them which I think are not properly parts of any exhibits, and I object to all of his exhibits which contain comment of any sort.

The Commissioner: For example, Mr. English?

Mr. English: Exhibit 13, Sheet 1.

The Commissioner: Where is the comment?

Mr. English: Well, at the end of it, if we are reading the same one, Your Honor.

The Commissioner: Your objection is to the comment rather than to the exhibit itself?

Mr. English: Yes; any exhibit is objectionable which contains testimony over and above and in addition to mere computation.

Mr. Miller: Mr. Commissioner, they are presented as testimony, and if Mr. English desires Mr. Palmer to make the statements under oath, we can easily put him on the stand and leave him read the exhibit.

The Commissioner: Didn't Mr. Palmer in his testimony read these comments, all of them, as I remember it, under oath?

Mr. Miller: He certainly explained the exhibits thoroughly.

By the Commissioner:

Q. Didn't you, Mr. Palmer? Didn't you read these comments? A. I don't recall all of them; some of them.

Mr. Miller: He put it in exhibit form, and it seems to be a more satisfactory method than to require Mr.

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Palmer to repeat and read every word of it.

Mr. English: My objection is perhaps technical, but from my experience in the trial cases I certainly feel that the Commission ought not receive testimony in that form. It is quite proper for the witness in response to questions of counsel to submit whatever information may be regarded as relevant, but a statement in writing I think is objectionable.

Mr. Miller: An objection might be taken on that ground to any figures in any exhibit or any statements.

Mr. English: Of course, it is a different proposition when the witness makes statements in writing.

The Commissioner: Is your objection confined to the comments at the end of these exhibits of Mr. Palmer's, or to the comments and the figures?

Mr. English: To the comments. Entirely to the comments, because the comments are there our position is that the exhibits themselves are objectionable.

Mr. Miller: It is our position, Mr. Commissioner, that the verbal testimony of our witnesses and the exhibits are on a par, and that whether Mr. Palmer made his comments in the form of verbal testimony or in the form of written comments on the exhibits, does not make any difference whatever.

The Commissioner: Exhibits 1 to 30 will be admitted to the record and an exception noted for Mr. English as to the admissibility of at least that part of the exhibits introduced through Mr. Palmer which comment, rather than the tabulations. It is further noted that Mr. English objects to the propriety of these exhibits in their entirety because of the comments.

Mr. English: May my objection be enlarged a little. I referred to Mr. Palmer's exhibits, it may be that some of Mr. McShea's exhibits have comments on them.

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The Commissioner: I don't think so. You mean if there are any that both are objected to?

Mr. English: If there are any.

The Commissioner: That will be noted.

Mr. Miller: If the Commissioner desires we can recall these gentlemen and meet Mr. English's objection flatly.

The Commissioner: Certainly if the witness reads into the record comments that he has typed on the exhibits—

Mr. Miller: That was the thought in my mind.

The Commissioner: —it seems to me that meets the objection made by you. Therefore, I rule that the exhibits are to be admitted to the record upon the conditions as stated.

The Commissioner declared a recess of five minutes.

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AFTER RECESS

L. C. BIERMAN, recalled.

*Direct Examination*

Mr. Miller: Before proceeding with Mr. Bierman's testimony relative to certain changes in the record, I would like to offer another exhibit.

Statement showing discount, brokerage or underwriting commission, and mechanical expense on all security issues approved by the Commission, to November 15, 1936, which were proposed to be distributed ultimately to the general public, produced and marked Public Service Commission's Exhibit No. 31, E. E. M., 12/9/36.

Mr. Miller: I would like to offer as Commission's Exhibit No. 31, a copy of which was sent to each of

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counsel for the respondents, consisting of a statement showing discount, brokerage or underwriting commission, and mechanical expenses on all security issues approved by the Commission to November 15, 1936 which were proposed to be distributed ultimately to the general public.

The Commissioner: Exhibit No. 31, will be admitted to the record.

Mr. LaBrum: These are just statements of fees, there are no comments or criticisms?

Mr. Miller: Mr. Commissioner, I might point out that in the first column at the left of the exhibit it shows the security docket numbers. That has reference to the official records of the Commission, and all of the papers and proceedings before the Commission will be found at those docket numbers if the respondent desires to refer to them.

The Commissioner: The column, "Remarks" at the right hand side, those are statements of facts in the security applications, are they not?

Mr. Miller: That is correct, Mr. Commissioner.

The Commissioner: Not remarks by the person who made the tabulation. I mean in the sense of this opinion, they are statements of fact as given in the application, are they not?

Mr. Miller: In the applications or papers filed in the security dockets listed.

The Commissioner: Exhibit No. 31, will be admitted to the record.

By Mr. Miller:

Q. Mr. Bierman, have you any corrections to make in your testimony? A. I have one correction. On Page 155, Lines 11 and 12, should read as follows: "That was taken from the balance sheet as of December 31, 1935."



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Q. Have you any further comment? A. I don't.

Mr. Miller: Mr. Commissioner, the Commission rests, so far as direct testimony goes.

(Remarks by Mr. Miller at his request off the record).

Mr. English: Before we proceed with cross examination, when this investigation started we intended to give to the Commission all of the books and records of the company for their inspection. It happened that when the representatives of Day and Zimmerman began a search of the premises they ran on to a couple of old books, and in fairness to ourselves we want to submit them now for whatever examination the gentlemen of the bureau may desire to make.

The Commissioner: What sort of books are they?

Mr. English: One is an old minute book of 1885 to 1887 of the Edison Company. The other is a general ledger and journal of the Westinghouse Company. They are not voluminous at all.

The Commissioner: You are not offering them in the record.

Mr. English: No, we are just submitting them for examination.

The Commissioner: As the other books and records of the company are.

Mr. English: Exactly so.

Mr. Miller: The company has, I believe, made available to the Commission's representative all the records which they had, and now they are permitting the Commission's representatives to examine these records which they found since the Commission's representatives were in York.

Mr. English: That is exactly the situation.

*R. A. McShea, Jr.—For Complainant—Cross*

**Re A. McSHEA, JR., recalled.**

*Cross Examination*

**By Mr. English:**

**Q.** Mr. McShea, in your testimony you undertook to tell us something about the ownership of the stock of the Edison Company. Will you make that a little more definite. Do you know how the stock of the Edison Company is owned? **A.** All of the common stock of Edison Light and Power Company is owned by York Railways Company.

**Q.** Do you know where it is pledged, if anywhere? **A.** I think it is pledged under the mortgage of the York Railways Company.

**Mr. English:** May I say for Your Honor's convenience, and for counsel on the other side, that I will refer to pages of the testimony. I am referring now to Page 27.

**By Mr. English:**

**Q.** Then it is a fact that the common stock of the Edison Company is pledged under the mortgage of the Railways Company with the Tradesmen's National Bank of Philadelphia as trustee? **A.** I believe that is correct.

**Q.** Do you know, or did you undertake to find out, the extent to which property of the Railways Company is used by the Edison Company in York?

**The Commissioner:** Used for what purpose?

**Mr. English:** What I have in mind, Your Honor, is that the impression, inadvertently perhaps, has been created here that the Railways Company is the beneficiary of certain property of the Edison Company. The purpose of this line of questions is to develop the fact that—

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The Commissioner: You mean property was referred to by our witnesses as really belonging to the York Railways that was included in the rate base of Edison, in our opinion?

Mr. English: It is rather the other way round. Property of the Edison Company that is being used without compensation by the Railways Company.

The Commissioner: Yes.

Mr. English: Now, then, I propose to show by the witness, I am sure that he will be glad to help us in that respect, that there is certain property of the Edison Company—of the Railways Company which is being used by the Edison Company.

Mr. Miller: I have no objection, but I believe Mr. Palmer might be a better witness to develop that.

Mr. English: But this witness undertook to testify with regard to it.

The Commissioner: That is correct, proceed.

Mr. English: I have in mind Page 29 of his testimony.

By Mr. English:

Q. Don't you know it to be a fact, Mr. McShea, that more than 10,000 square feet of property of the Railways Company is being used for all practical purposes by the Edison Company? A. At what location are you speaking of now?

Q. I am asking you.

The Commissioner: Now, Mr. English, what do you mean by 10,000 square feet?

Mr. English: Warehouse, garage, carbarns for the supply of materials, and all practical purposes.

The Commissioner: Why would the Edison Electric Company be using part of the carbarns of the York

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Railways? You mean for storage of equipment and that sort of thing?

Mr. English: That is my understanding.

The Witness: I don't know of any situation such as that. I have not personally been out to the carbarn and the power plant, and various other places where the Railways Company owns property to make a division of the use of that property.

By Mr. English:

Q. Then I am sure you would want to correct the impression, if you made one in your testimony, to the effect that the Railways Company was getting more than an even break from the Edison Company in the use of real estate, wouldn't you?

The Commissioner: I don't know whether the witness does or not, Mr. English. If that is so, that is one thing; if it is not so, or if it is a matter of opinion, that is quite another thing.

Mr. English: It is a question of fact. What I am trying to do is to get rid of what we think is a wrong impression.

The Commissioner: The witness says he does not know that there are 10,000 feet of space being used by Edison Electric Company of property that belongs to the York Railways for the benefit of the Edison Electric, so he certainly cannot express an opinion. If he was wrong, if he created an assumption or the other way, unless he does know—I am not saying that what you say may not be so—but until the witness knows, I don't see how he can express an opinion if he was wrong.

Mr. English: If he does not know he should never have expressed an opinion, which he does in this record.

The Commissioner: I don't think that is quite a fair

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picture, Mr. English. You say do you know that 10,000 square feet of space is used by Edison Light and Power Company belonging to York Railways Company. Mr. McShea says he does not know, and then you say if that is true didn't you perhaps create an unintentional false impression. You are asking him to admit something based on a picture which you present which he says he does not know anything about. I don't see how you can do that.

Mr. English: I certainly want to be entirely fair, Your Honor. What I had in mind was these questions referring to certain subsidiaries, companies which pay the respondent rent for the use of space.

The Commissioner: I am not attempting in any way to restrict you on examination, on anything he said, but to draw conclusions that are at variance, based on your statement that 10,000 feet of York Railways property is used by Edison Light and Power Company for the benefit of Edison Light and Power, I don't think is a fair proposition to put to this witness.

Mr. Miller: If Mr. English shows the facts which are at variance that will be all right.

The Commissioner: That has to be done through other than Mr. McShea.

Mr. Miller: If Mr. English presents testimony showing facts contrary to Mr. McShea's understanding the Commissioner is entirely willing to take the facts as against the understanding that Mr. McShea has.

Mr. English: I always supposed it was perfectly legitimate in cross examination to ask the witness to correct his own misapprehension if he has created one.

The Commissioner: You are asking him, as I understand it, to correct what you think is a misapprehension based on a statement of fact which you now present to

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him, which he says he does not know anything about. I think the facts have to be produced by your own witness before you can ask him to modify an opinion based on those facts.

Mr. English: There is a disagreement between yourself and myself. I don't want to be too persistent about it, but I do think we have a right to ask the witness to correct this testimony.

The Commissioner: Suppose you say that a million feet of property of York Railways is used by Edison Light and Power Company for their benefit, and he says he does not know, of course, that would change very drastically the position that he takes. How can you expect him to admit that 10,000 feet of York Railways property is used by Edison Light and Power just on your say so. I am not disparaging what you say in the slightest, but I don't think it is a fair position to put this witness in.

Mr. English: I will withdraw what you regard as an unfortunate question. The precise form is not important, but what I had in mind was this: Mr. Miller asked him with regard to these facts, and my only purpose is to develop if he knows the fact that there is an interchange of facilities, so to speak, which is equivalent to rental.

The Commissioner: Ask him if he knows. If he doesn't know he can say so, but I don't think you ought to ask him to draw conclusions based on something that he doesn't know anything about.

By Mr. English:

Q. Did you inquire, Mr. McShea, as to the extent to which the respondent company had the use of certain facilities of the Railways Company in York? A. I did with respect to the



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office building, but not in connection with any other building or property.

Q. Did you make any estimate as to the extent to which the office building is shared between the different companies? A. No, I made no estimate. I requested several weeks ago, or perhaps a month and a half ago, that the company should furnish me with an estimate of the division of the use. Now, I have not received that, and of course, I am not in any position to make an estimate such as you mention.

The Commissioner: Mr. English, is it your own position that Edison Light uses for its benefit a certain space of the York Railways, and York Railways does not against that use facilities or space of the Edison Light and Power Company at all, that it is all to the benefit of the Edison Light and Power?

Mr. English: No, Your Honor. What I am trying to get away from is the imputation here that the Railways Company gets undue advantage as far as the respondent company is concerned. That is not in harmony with the facts.

The Commissioner: In the use of space?

Mr. English: Right. In the use of space and facilities.

By Mr. English:

Q. On Page 45 you testified to some extent as to the cost of power to the Edison Company. Just what were the factors that you took into consideration in determining the cost of power? A. Where is that, Mr. English?

The Commissioner: That is at the bottom of the page, comes down really to the amounts. He refers to Exhibit No. 6, don't you, Mr. English?

Mr. English: Yes, I think you are right, Your Honor, Sheet 29 of Exhibit No. 6.

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: The Witness: Will you refer to the question now.

By Mr. English:

Q. Have you made an analysis of the cost of production or producing electricity?

The Commissioner: That is all you are referring to.

Mr. English: Exactly so.

By Mr. English:

Q. What factors did you take into consideration?

The Commissioner: What we are trying to get at is what factors Mr. McShea took into consideration in making up Exhibit 6, is that correct?

Mr. English: Yes sir.

The Witness: Exhibit 6, the first page of Exhibit 6, is a summary of all the production system accounts as shown by the books.

By the Commissioner:

Q. In other words, operating expenses? A. That is right.

Q. That is generating steam power? A. That is right, that is generating steam power. Included in Exhibit 6 are statements showing the cost of producing electricity, also as shown by the books.

By Mr. English:

Q. Did you take into consideration, Mr. McShea, in that connection the benefits so far as Edison is concerned in connection with the production of power as an incident to steam, or steam as an incident to power, if you care to put it that way? A. I don't think I just understand what you mean.

Mr. English: I think you have answered the question.

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The Commissioner: I object to that vigorously. I think the witness has answered you, Mr. English, that he didn't understand the question as you put it.

By the Commissioner:

Q. Is that correct, Mr. McShea? A. That is right.

Mr. English: The point we want to make clear is that the witness in his direct testimony, from our viewpoint at least, went far afield in expressing opinions.

The Commissioner: If the witness does not know the answer to your question, if it is clearly stated, let him say so, but I don't want even the witnesses for the Commission or the witnesses for the Company trapped or put in a false position by an answer which was obviously not intended to go to the merit of your question.

Mr. English: I am perfectly willing to go the entire distance with Your Honor in that respect.

The Commissioner: Let us have the question stated so that the witness understands it clearly, so he can make a clear and complete answer, so far as he can.

Mr. English: May I put this question this way, Your Honor?

The Commissioner: Put it any way you want as long as you get to the meat.

By Mr. English:

Q. Did you undertake to investigate the extent to which the Edison Company gets financial benefit from the generation of power which as we say is incidentally used for the sale of steam? I am referring now to the business of the Steam Company which you have undertaken to segregate from the Power Company earnings.

The Commissioner: In entirety? Has he done that in entirety.

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Mr. English: Yes. That is the theory, Your Honor.

The Witness: You say the extent to which they benefit financially?

Mr. English: Yes.

The Commissioner: Let me see whether I understand the situation at York. This plant, this so-called Steam Heating Plant, they are producing steam as a primary object, but as a secondary object a certain amount of electricity.

Mr. English: Electricity, yes.

The Commissioner: That electricity is used by the Edison Company and disposed of by sale.

Mr. English: Sold to its customers?

The Commissioner: Is that correct?

Mr. English: That is our understanding.

The Commissioner: As I understand it, you are trying to find out from Mr. McShea, and I am interested in that, of course, as to whether that part of the use of the Steam Plant, in the proper amount, whatever it is, as related to the production of kilowatt hours by that same Heating Plant, which is sold by Edison Light for which it gets paid, whether that has been taken into consideration in the building up of this picture?

Mr. English: Exactly so.

The Witness: Exhibit 6 reflects not only the cost of Edison, but also the amounts received by Edison from York Railways Company and the York Steam Heat Company.

By Mr. English:

Q. May I put it this way, Mr. McShea: Did you inquire what Edison would have to pay for an equivalent amount of power if it were obliged to purchase it? The power I have in mind is that which is incident to the production of steam?

A. If you will allow an assumption I can answer that. I as-

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sume that they would purchase energy, electricity from the source from which they now purchase electricity, that is from Holtwood and Safe Harbor.

By the Commissioner:

Q. Did you say assume that Mr. McShea, because this source of power has ample additional supplies of power from which they could buy that quantity of power, on that assumption? A. Well, on the assumption that these sources have the supply.

Q. Have an additional supply beyond the amount they now purchase? A. That is right. As a matter of fact—

Mr. English: That is a perfectly fair assumption.

Mr. Miller: I think Mr. English's question is based upon an unjustified assumption, because he is assuming that the Edison Electric Company will no longer be able to get its power from the Steam Heat Company so long as they can get it from the Steam Heat Company at that rate I think that is the rate which should be considered.

The Commissioner: At what rate?

Mr. Miller: Well, the cost to them.

The Commissioner: The cost to the Steam Heat Company?

Mr. Miller: No, the Edison. Mr. English has asked if other sources were investigated, as I understand it, other sources of power.

The Commissioner: Let me understand the picture we are trying to get clear here. There is the Edison Light and Power Company and the York Steam Heating Company—

Mr. English: Right.

The Commissioner: That is correct. In addition to some other companies. Now, the Steam Heat Com-

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pany, which is owned in this general pot of control, generates steam for one thing.

Mr. English: No, it sells steam, but it is generated by the Edison Company.

The Commissioner: But it is sold to the Steam Heat Company?

Mr. English: Right.

The Commissioner: At cost or a little more than cost, or less than cost. Then the real picture is, in the generation of that steam by the Edison Light and Power Company they produce a certain number of kilowatt hours also of electricity.

Mr. Miller: That is correct.

The Commissioner: Now certainly the cost of producing that "some" amount, the cost of producing that amount of electricity is a proper charge for the Edison Light and Power Company, and certainly some charge for the facilities, a reasonable amount, for producing that amount of electricity should be made. Now, isn't that the picture that we are trying to clear.

Mr. English: Exactly so, and place in the rate base.

The Commissioner: A proper amount.

Mr. English: A proper amount.

The Commissioner: Yes, as I see it.

Mr. English: What I am trying to develop from the witness is the extent to which he took these factors into consideration in undertaking to eliminate from the rate base what is called the Steam Plant.

The Commissioner: It seems to me elementary, I am not an engineer or accountant very unfortunately, but it seems to me that if the Edison Light and Power produces any amount of electricity with whatever facilities, whether it is the Steam Heat Plant kite, or whatever it is, for that amount of electricity produced they certainly have a right in a rate base to some figure of



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value on the property that produces that part of the electricity they use—some figure, I don't know what it is, or what it should be yet.

Mr. Miller: That is true, Mr. Commissioner. If the Edison Company needs the power generated in the production of steam, but if—

The Commissioner: If that is the proper setup, but if Edison Light and Power Company can purchase all of its power at a less figure than it would cost to produce it that is a thing that ~~we can show~~ and properly show. If Mr. McShea has an answer he can make it at this time.

The Witness: I think I have finished.

By Mr. English:

Q. You testified I think this morning, Mr. McShea, to some additional taxes that were not taken into consideration by you. I have particular reference to Page 71: You didn't refer, unless I am mistaken, to the new Federal Capital surplus tax, did you? A. No sir, I have not referred to that any place.

Q. I think you will agree that that was to be a source of some expense to such corporations as the respondent here, if they are fortunate enough to have that surplus. I mean that tax should be added to the others? A. I am not so sure about that.

By the Commissioner:

Q. What was your answer? A. I am not so sure about that.

Q. What do you mean by that answer? A. You are speaking of the tax on undistributed profits, is that right?

Mr. English: Yes.

The Witness: The experience of this company has been that they have a sufficient amount of dividends

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each year, which if continued in the future will eliminate the necessity of paying such a tax.

By the Commissioner:

Q. Mr. McShea, isn't it a fact that that tax applies to surplus only above a certain amount? A. That applies to a certain portion of the undistributed earnings in a given year.

The Commissioner: If there was only an undistributed amount of earnings of \$10,000, would that be tax exempt. As I understand that tax it does give exemption to some minor degree at least.

Mr. English: I think there is an exemption.

Mr. LaBrum: Not under the new act, there is absolutely no exemption of the undistributed earnings. You must pay all your earnings or pay a tax on undistributed surplus.

The Commissioner: Every company?

Mr. LaBrum: That goes even if you have a deficit in your capital account.

Mr. Miller: There is a serious question whether the rate payers of the company should bear that tax or whether the stockholders should bear that tax. You must have certain working capital, and that is a tax on your working capital under the new act.

The Commissioner: That is exactly what I was getting at. I thought that under this act that there was a certain flexibility which gave to a company some amount of working capital that would not be taxed, as an incentive to good management, but perhaps I am wrong.

Mr. LaBrum: Not under the new act. The purpose of the act was to force distribution of all earnings.

Mr. English: I am merely trying to bring out from

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the witness that that is one tax which you didn't take into consideration.

The Commissioner: The witness takes the position that it may very well be that the tax should not be borne by the consumers of the company but by the security holders.

Mr. LaBrum: That is a wrong assumption, because if it is distributed to the security holders there will be no tax.

Mr. Miller: This is not the time to argue that question.

The Commissioner: I am still wondering whether that is the witness' position.

Mr. English: After all that is all we are trying to develop.

By Mr. English:

Q. My colleague has inquired as to whether you have read the act and are really familiar with it?

The Commissioner: As I understand it does not make any difference what the act says. The act has nothing to do as to how any item should be charged against the company or not charged against it in a set-up of the rate base.

Mr. LaBrum: This is a tax that has to be paid by the company. It is part of its operating expense. If he is testifying as to the taxes that the company may have to pay he is not including in it one of the most important taxes, and one of the highest taxes that there is assessed against the company.

The Commissioner: Mr. LaBrum, the witness testified, as I understand it, not on the agency paying the tax, but where it should be properly and finally charged.

Mr. LaBrum: Ask him that question.

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The Commissioner: He said he thought there was a real question as to whether the consumer should bear the tax or the stockholder.

Mr. Miller: I would request that the respondent's counsel ask the witness questions and receive the answers and not comment on the record. It is drawing this record out to inordinate length, it seems to me.

The Commissioner: Proceed.

By Mr. English:

Q. Now, Mr. McShea, on Page 159 of your testimony you have a figure of \$267,514.68, to which you refer as consumer contributions. Is that amount included in the Day and Zimmerman appraisal to which reference was made at the last hearing in any form of property? A. I believe the property was included, but of course I don't know in what amount.

Q. Could you take the exhibit and find the property? A. Me?

Q. Yes. A. No, I couldn't do that.

Q. Where do you get the figures? A. From the company's office.

Q. Was that the amount you get from the company's office \$267 some thousand dollars?

The Commissioner: Let us get to the exhibit from which it was made up. Exhibit 22, I believe.

The Witness: The entire amount was developed from records in the company's office.

By Mr. English:

Q. What were the records? A. Mostly records kept by Mr. Saltzgeber in the new business department.

Q. Is there any ledger account by that name? A. Donated capital?

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Q. Yes. A. No.

Q. Where did you get the phraseology? A. I received, obtained the phraseology from the amount included in the reserve for renewals and replacements that was ear-marked by the company as donated capital.

Q. What was the amount you found on the company's books? A. In the reserve for renewals and replacements as credited on June 30, 1936 the amount was \$154,859.78.

Q. Then how did you arrive at this figure of \$267,514.68? A. Well, the company furnished us with a series of statements in 1934 showing that the donated capital as of October 31, 1933 amounted to \$231,374.

Q. Who furnished you with that information? A. It was either Mr. Keesey or Mr. Wayne.

Q. Now, isn't it a matter of fact, Mr. McShea, that that amount merely represents an estimate as to the aggregate amount of what you call consumer contributions? A. You mean \$267,000?

Q. Yes, sir. A. Well, the \$231,000—

By the Commissioner:

Q. Mr. McShea, don't these tabulations that you have picked up on the first page of Exhibit 22, doesn't that give the names of the persons where the lines are constructed and the amount of capital which reconcile this figure? A. I was just about to say as far as I know, and I think I know a good deal about it, the \$267,000 figure is a statement prepared in my new detail from the records of the company's office, and with the assistance of company employees and supported by individual items making up the amount. I certainly don't think it is an estimate.

By Mr. English:

Q. Well then, as I understand you, this figure of \$267,000 and a fraction represents what you call consumer contributions as of June 30, 1936? A. That is right.

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Q. Based entirely upon information that you received from the company officials, is that right? A. Based entirely upon information developed from the company's records and files.

Q. Did anybody give you that precise figure of \$267,514.68 representing what you call consumer contributions as of June 30, 1936? A. That figure was arrived at by myself.

Q. I am sorry, you can answer that question yes or no. A. Did anybody give it to me? No, that is right.

Q. No one gave it to you? A. No.

Q. Then this figure you made up yourself, didn't you? A. That is right.

Q. How did you do it?

By the Commissioner:

Q. Now, Mr. McShea, the first figure on the first sheet, \$231,000, that figure relates solely to the tabulation that you give by name and address of persons, the consumer, and the amount relating to that consumer, doesn't it? The sheets back of it? A. That is right.

Q. In other words, you have the full and complete detail as to the \$231,000, do you not, backed up in this exhibit? A. That is right.

Mr. English: That is Exhibit No. 22, Your Honor.

The Commissioner: \$231,000 is backed up by the eleven or twelve sheets—well, not twelve, but ten sheets back of it, and then you have additional sheets back of that, substantiating the other figures added to the \$231,000, do you not?

The Witness: That is right, the name of the person affected.

By Mr. English:

Q. Did you get the information as to names and amounts shown in Exhibit 22 from the books of the company? You



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may answer that yes or no and then explain. A. Not from what you call the general books.

Q. From what books did you get it? A. Mostly work sheets or folders and files kept by Mr. Saltzgeber in the new business department, and from other information contained in the general accounting office under Mr. Ludwig. In the preparation of this Exhibit we were in touch not only with Mr. Saltzgeber, but Mr. Steese, or one of the Steeses, Mr. Serri and Mr. Houck, his assistant.

Q. Did the work sheets show the amounts? A. Of course, we didn't pull those amounts out of the air certainly—

Q. You don't mean to answer me that way. Either they did or they didn't. A. There is a work sheet or paper of some sort in the company's office to support every one of these amounts.

Q. Every one of the amounts? You are perfectly certain of that, are you? A. If you can show me where I am wrong I will be glad to admit it, of course.


By the Commissioner:

Q. Mr. McShea, I think Mr. English is entitled to the correct answer on these various papers of all kinds that you were able to locate in the various offices of the company, were their figures there in the exact amount for these persons as you put them down here, the various figures going to these various persons, in total making these various amounts. Did you have to include from tables other figures or estimates or anything else in the company's records, did you have to calculate this amount or did you find somewhere each one of these amounts given, which in sum total made up these given amounts? A. We found each one of these amounts in the company's office.

By Mr. English:

Q. May I call your attention to Exhibit 22, Sheet No. 1, where you say lines financed by customers and donated to re-

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spondents to October 31, 1933 as shown by statement prepared by respondent, a copy of which is attached. Sheets 2 to 10 inclusive, in the sum of \$231,374.84, and then ask whether you found work sheets or other memoranda in the records of this company showing the particulars of that \$231,000. You may answer that yes or no. A. Will you repeat the question.

(Last question read.)

By the Commissioner:

Q. In answering that question are you looking at Exhibit 22? A. Yes.

Q. The first item on the first page is the item that Mr. English just read? A. That is right.

Q. That item is backed up as I understand it, tell me if I am correct, in the tabulation on Sheet 2 which arrives at a figure of \$231,000, is that right? A. That is right.

Q. And that Sheet 2 is backed up by the detail of names and amounts in most cases addresses from Sheets 3 to 10 inclusive? A. That is right.

Q. Now, will you answer the question? A. It is pretty hard to answer that yes or no.

By Mr. English:

Q. Why? A. I will answer it, yes.

By the Commissioner:

Q. Explain it if you want to. A. First of all I would like to explain that what I call the original schedule was submitted to us by Mr. Keesey or Mr. Wayne in 1934 as being a record of the company.

By Mr. Keesey:

Q. May I ask how much that was? A. \$231,374.84.

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By the Commissioner:

Q. That is this first figure on the exhibit to which you refer? A. Now, we took up the work at York, we made test checks on the amounts contained in this exhibit, and we checked a good many of them and went back to the records of Mr. Saltzgeber and others, and we did check out these identical amounts that appear in there.

By Mr. English:

Q. Perhaps I didn't make my question clear, Mr. McShea, did you find supporting data for this entire \$231,000 in the form of work sheets or other memoranda in the records of the company? A. You want yes or no to that, I suppose.

Mr. Miller: Answer yes or no and then explain.

By Mr. English:

Q. Oh, yes, you may explain in any way you like; but I think we are entitled to a categorical answer. A. What was the question?

(Last question read.)

By the Commissioner:

Q. Let me interject there, enlarging the record much to Mr. Miller's disgust, Sheets 3 to 10 added together in amounts bring you to \$231,000, is that correct? A. That is right.

Q. Now, did you get from the company's books or records in any way these items in these amounts listed on Sheets 3 to 10? A. Yes sir.

Q. All of them? A. All of them.

By Mr. English:

Q. In the form of work sheets? A. Limited only as to the extent to which we made the test check.

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Q. To what extent did you make a test check; how many items did you test?

By the Commissioner:

Q. Where did you get the item from in the first place to test? Are these Sheets 3 to 10 data that was given you by Mr. Keesey originally? A. Yes sir.

Q. It was? A. Yes sir.

Q. That is what they are trying to get at. Mr. Keesey gave you this data on Sheets 3 to 10?

Mr. Keesey: That is not correct. Mr. McShea won't say that.

The Commissioner: He did say it.

By Mr. Keesey:

Q. You don't mean, Mr. McShea, that I gave you the data on Sheets 3 to 10? A. What I mean is that you handed the schedule to me.

Q. This schedule? A. Not this schedule, but the original from which this was copied.

By the Commissioner:

Q. Giving the names and amounts of each person? A. Yes sir, here it is.

By Mr. English:

Q. Do you have the original schedule with you? A. Yes sir.

Q. All right, let us see it.

(Witness handed schedule to counsel.)

By the Commissioner:

Q. Then as I understand it, according to your statement, you were given a tabulation by Mr. Keesey which is copied out

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accurately on Sheets 3 to 10, bringing it to \$231,000.00, then you spot checked that against the books and records of the company? A. That is right.

The Commissioner: I am not trying to put words in the witness' mouth. I am simply trying to find out what exactly did happen.

Mr. English: Our theory is, if your Honor will bear with an enlargement of the record, in the last analysis these things are mere estimates that don't represent actual expenditures.

The Commissioner: If Mr. McShea is right, then the estimate was made by Mr. Keesey or somebody for him, and that he then spot checked that against the company's records, and found wherever he spot checked it to be accurate.

Mr. Miller: Mr. Commissioner, I understand also that when this investigation was started, to prepare for this case, that a copy of the statement which Mr. Keesey had given to Mr. McShea was presented by Mr. Ludwig of the company and that that statement coincided with the statement presented by Mr. Keesey.

Mr. English: Is that testimony.

Mr. Miller: I am just enlarging the record a little bit.

By Mr. English:

Q. On Page 160, however, you said that the amount recorded on the books as of June 30, 1936 was \$154,859.78. That is correct, is it not? A. That is correct, recorded in the reserve for renewals and replacements account.

Q. Of course, you would not be able to segregate this donated property from the Day and Zimmerman appraisal, would you? A. No sir.

Q. As I understand your testimony I think you made it clear



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that in your judgment at least what you call donated property should not be included in the company's rate base. I only referred to the matter because you said that in substance?

A. That is right.

Q. I am just wondering whether you would mind giving us your reasons for it? A. The reason that I don't believe that the customer should be required to pay a return on property that was paid for by himself.

Q. Did you inquire as to the extent to which this property is actually owned by the company? A. Oh, yes.

Q. It is all owned by the company, isn't it? A. I think except in a few scattered instances where I think somebody built. Occasionally the question of title came up and they had difficulty straightening out the customer, but substantially all of it is owned by the company.

Q. The amount involved in such matters would be inconsequential? A. Yes.

By the Commissioner:

Q. Mr. McShea, I understand your position to be that no matter who has title to that amount of equipment or property, if the customer paid for it, paid for it since installation, he should not be required to pay in his rates a return on that amount of property, is that correct? A. That is correct.

Westinghouse Electric Light and Heat and Power Company, 11/18/08, produced and marked Respondent's Exhibit No. 1, E. E. M., 12/9/36.

By Mr. English:

Q. I call your attention to Respondent's Exhibit No. 1, which for identification is marked Westinghouse Electric Light Heat and Power Company, 11/18/08, and ask you whether you examined the item called "construction" on Page 1?

A. Yes sir, I examined that.

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Q. Do you remember what your original cost, as you use that phrase, or misuse it, as the case may be, was in connection with the Westinghouse property? A. At what time? At the time it was sold to the other company?

Q. At the time it was taken over by Edison? A. In 1908. I used the figure \$32,214.78.

Q. What is that figure under construction? A. There is no balance in the account as it was closed out.

Q. Isn't there a figure, a total under this item of construction of \$66,420. Let us not quibble about it. (Handing book, marked Respondent's Exhibit No. 1 to the Commissioner).

A. The open balance there is that amount, yes sir.

Q. Under the item of construction in a book of original entry, of that much, and yet you undertake to tell us that the original cost of that property was thirty-two some odd thousand dollars. Do you still stand on that testimony?

A. I stand on that testimony.

Q. All right.

By Mr. Miller:

Q. Explain it. A. The Westinghouse Company had no books prior to December 31, 1901. At the time this entry was made the entry was \$66,537.86. Now, from the books and reports for the year 1901 we find a combined property account, including equipment, real estate and buildings, and these items total \$31,097.29. At that time the profit and loss balance was \$6,091.66. In the 1902 tax report the property is shown at \$66,537.86, the amount just referred to from the ledger, but the profit and loss account went up from \$6,091.66 to \$40,433.13.

By the Commissioner:

Q. What caused that ballooning? A. It was not caused by earnings that year, because that amount as shown by the tax report was \$4,084.57, so the only conclusion I could come to was that there was a write-up in the property account.

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By the Commissioner:

Q. The 1902 report showed what at the beginning of the year? A. I don't think they showed a balance at the beginning of the year.

Q. What did they show at the end of the year? A. The tax report for 1901 showed \$23,097.29 for cost of equipment; \$8,000 for real estate and buildings, and 1902—

Q. What was the total? A. \$31,097.29. Now, in 1902 the only amount is shown at \$66,537.86.

Q. And despite the grand total in that year the earnings shown for that year were what, four thousand some dollars? A. \$4,084.57.

Q. So that the maximum in your opinion for the end of that year was the same for the end of the year previous plus the net earnings, is that right, roughly? A. Roughly you might come to that conclusion.

Q. And not an addition of almost ten times, is that right? A. That is right.

By Mr. English:

Q. Well now, in what you said about handling these tax reports I assume that you adopt the same method in arriving at what you call the original cost of these different constituent companies, do you not? A. In the case of the Peoples Company I attempted to come to the figures shown on the balance sheet for April 11, 1894.

Q. Did you pay any attention to the sworn statements of the officers filed with the tax officials as to the value of their assets from year to year? A. The tax reports contained no information showing the cost or value of the property.

Q. In no instance? A. Not as far as I know.

Analysis of book figures and figures obtained from capital stock reports, Westinghouse Light Heat and

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Power Company, produced and marked Respondent's Exhibit No. 3, E. E. M., 12/9/36.

By Mr. English:

Q. Exhibit No. 3 shown to the witness. Just describe Exhibit No. 3 to the Commissioner.

The Commissioner: Whose exhibit is that?

Mr. English: That is ours. I don't mean to offer these, but I want the benefit of the witness' judgment as to what it contains.

The Witness: This is entitled an analysis of book figures and the figures obtained from capital stock reports, that is the heading.

The Commissioner: Who made the analysis?

Mr. English: One of our witnesses. I was about to ask him the question whether the figures shown on this exhibit correspond with those he found in his tax reports.

The Witness: I beg your pardon, on my previous answer. You are speaking now of the Westinghouse Company?

By Mr. English:

Q. Yes. A. I was speaking of the Peoples before.

Q. Then may I ask you this question: The Westinghouse reports did show from year to year the estimates of the officers as to the value of their property, isn't that right? A. Of course, I assume the officers supported their tax reports.

Q. That is not answering the question: The reports did or did not show that information. You said you saw them. You said very positively at the last hearing that you examined them carefully. A. This contains information as to the fixed capital as shown by our Exhibit No. 23. It also has a column

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**AFTER RECESS**

R. A. McSHEA, JR., recalled.

*Cross Examination*

By Mr. English:

Q. Mr. McShea, did you see the minute book of the West-  
inghouse Company? A. Yes sir.

Q. Did you happen to notice the statement of resources  
and liabilities in the minute book as of December 31, 1893?  
Do your notes help you in that respect? A. As of December  
31, 1893?

Q. Yes sir. A. Yes sir.

Q. And did you notice under the item of resources a plant  
account in the sum of \$43,447.87? A. I did.

Q. Consisting of electric plant, \$11,045.85? A. Yes.

Q. Steam plant, \$14,558.73? A. That is right.

Q. Buildings, \$4,187.85? A. Yes.

Q. Pole line account, \$8,005.09? A. Right.

Q. Meters, \$946.35? A. Right.

Q. Land, \$4,704.00? A. That is right.

Q. Cash, \$250.33? A. Yes.

Q. And under that expenses, \$7,594.91? A. Yes.

Q. Supplies, \$2,954.35? A. Right.

Q. Accounts receivable, in the amount of \$498.34? A.  
That is right.

Q. Making a total of \$54,745.80? A. Now, all of those are  
not assets, of course.

Q. I am merely asking you as to the figures. You found  
them in the minute book. A. Yes sir.

Q. As of the close of business December 31, 1893, is that  
right? A. That is right.

Q. In this same connection didn't you find that in the year  
1897 there was a reduction of fixed capital in the sum of  
\$12,119.87? A. I can give those to you from the tax reports.

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Q. I beg your pardon, sir. A. I will have to give those to you from the tax reports.

Q. Didn't you get this information from the books of the Edison Company? A. You asked about the Westinghouse Company.

Q. Westinghouse Company, I should have said. A. No, there were no Westinghouse books until about 1901, or so.

Mr. Keesey: That is the new book that was found.

By Mr. English:

Q. That is one of the two books we brought in this morning? A. I never saw that book until this morning. Shall I give you those figures from the tax reports?

Q. We would prefer to have them from the books of the company? A. I will have to work that up and submit it then.

Q. I appreciate the fact now that you have not had an opportunity to examine the books. Assuming that there was a write-down—may I invite your inquiry, Mr. McShea, into that particular question between now and the next convenient time? A. Yes sir. The question is?

Q. As to a reduction in fixed capital of \$12,119.87 in the year 1897 and to an increase in the year 1899 to \$28,739.00 making the column total of fixed capital \$65,918.84, which compares with \$66,537.86 on December 31, 1901. Do you know when the Westinghouse Company business was taken on to the York Company business? A. The property was sold in 1908, but I believe for several years prior to that time the property was actually operated by the Edison Electric Company.

Mr. Miller: May I ask just what you want Mr. McShea to do. Do you want him to take these two books that have been found and to examine them and see how they check in with his testimony, and correct his testimony in accordance with the books?



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Then in 1908 as shown by the ledger, which has just been presented, the balance shown on December 31, 1903 was \$66,420.80. There were no other entries in the account from 1903 until 1908 when three credit entries were made; credit for concurrent charge to profit and loss \$40,073.84, cash from draft \$1.96, cash \$26,345.00. Now, that had all the appearance to me of crediting in 1908 a write-up that was made in 1901.

Statement, capital stock and indebtedness for the year 1893, Westinghouse Light Heat and Power Company, produced and marked Respondent's Exhibit No. 2, E. E. M. 12/9/36.

By Mr. English:

Q. I ask you what that report shows as to the assets of the company as of that year? A. The cost of Red Lion \$8,005.09; cost of equipment \$25,604.58; real estate and buildings \$4,187.85.

Q. What is the total? A. Then cash and current assets \$103.20; profit and loss \$3,129.22; total \$41,029.94.

Q. You saw that report, didn't you, in connection with determining the original cost of this property? A. Yes, sir.

Q. And, of course, you were uninfluenced by the statement of its assets and liabilities in deciding that the original cost was something like \$35,000, I take it, is that right? A. I was not influenced by the assets as listed in that capital stock tax report.

By the Commissioner:

Q. Why not? A. Well, at the last hearing I showed in my testimony that the plant accounts as reflected by the tax report fluctuated so much from year to year, not every year, but every few years there were quite violent fluctuations in the amounts, and starting off from that, including our plant ac-

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counts actually shown by the reports I didn't think I was getting the correct answer.

Q. What I am trying to get at is: Here is a report of 1893 showing \$41,000 of assets. The you come down to that book, what year is that book entry, the first entry balance, Mr. McShea? A. \$66,000.

Q. What year is that? A. 1901.

Q. 1901, which is eight years later, is that right? A. That is right.

Q. That shows \$66,000 as compared to the \$41,000 in 1893, but you arrived at a figure considerably less than the \$41,000 of 1893, why is that? A. I explained a few moments ago about the increase in the profit and loss balance from 1901 to 1902. Now, there is a write-up, not an increase, which could not possibly have been accounted for by the earnings, and that is part of this \$66,000.

Mr. English: I think the exhibit shows, as has been suggested, that in spite of these entries in this same year, 1893, the witness starts out with an open entry of less than \$25,000.

Mr. Miller: That figure does not appear.

Mr. English: The figure does not appear under the statement of the witness, that is what we have in mind. If we are going to talk about original cost from anybody's viewpoint it does seem to me that this would have been the fair approach.

By the Commissioner:

Q. What year is that? A. Sometime between the first Monday of November, 1901, and the first Monday of November, 1902.

By Mr. English:

Q. That would appear on what year's report? A. 1902.

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headed "fixed capital" as determined by an examination of the company records. Of course, I don't know who did that.

Q. You are referring now to the exhibit? A. Respondent's Exhibit No. 3. The third column shows the difference between the Public Service Commission's Exhibit and book records, and then blocked off is the information headed from capital stock tax report.

Q. I think I might bring the matter to a head by asking whether between now and the next adjournment you will be good enough to check over a copy of this exhibit if we furnish one to you. A. Oh, absolutely.

Mr. Miller: For what purpose?

Mr. English: For the information of the Commission. It is a compilation of matters that either you have to put in or we will.

The Commissioner: What do you want him to check your exhibit for, as to accuracy, or what?

Mr. English: As to accuracy, yes. He has examined these tax reports, he says.

The Commissioner: I think your exhibit as to accuracy should be checked by one of your own witnesses rather than asking our witness to examine one of your exhibits for accuracy.

Mr. English: When we come to put it in there is no question about that. In the meantime we would like the benefit of the opinion of your representative as to whether there is any question as to the correctness of the figures as they appear there.

The Commissioner: Isn't it a little unusual for you to put in an exhibit, or rather hand the Commission's witness an exhibit and ask him to testify as to the accuracy of it before you introduce it in direct testimony?

Mr. English: I don't think so, Your Honor. I can ask him later, it is just a question—

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Mr. Miller: We are perfectly willing, Mr. Commissioner, to check the figures as to which we have information as those figures appear upon documents which Mr. McShea has examined. Of course, we cannot check the estimates of figures which appear in the exhibit as obtained from records of the company or placed in the exhibit by representatives of the company.

Mr. English: My understanding from the witness' testimony is that he has examined both the books of the company and the tax reports.

The Commissioner: But he has not examined this exhibit. Now, you want him to relate the exhibit to the figures found in the tax reports and the company's records, is that right?

Mr. English: Of which he has copies. This is merely for the purpose of disposing of any question as to accuracy between us. They may be wrong, I don't know, I have not seen them myself, but we are doing in this connection precisely what your counsel did in sending us exhibits to be checked over.

Mr. Miller: The purpose of sending those exhibits, Mr. Commissioner, was so that the respondents would be ready for cross examination on the exhibits, not checking the accuracy of the exhibits.

The Commissioner: Check it over. We will see what we will see.

Mr. English: I don't assume that it will involve a very large amount of work because the records according to the witness are available.

I think if Your Honor would care to take an adjournment at this time we might save time later.

The Commissioner declared a recess until 1:30 o'clock P.M.

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Mr. English: We are submitting the books, Mr. Miller, as we have everything else. I think we told Mr. McShea that he had everything. Now then, the books are available for any purpose that he may regard as suitable.

Mr. Miller: You asked him the specific question if he would examine the books and see whether certain figures appeared there.

Mr. English: I would appreciate his doing that, in addition to any other use he cares to make of them.

Mr. Miller: In preparation of further cross examination?

Mr. English: Exactly so.

By Mr. English:

Q. Was the York Electric Light Heat and Power Company a holding company for the Westinghouse and the Edison? A. That was my understanding received from the Company officers.

Q. And that happened sometime during the year 1899. Could you help us in that respect? A. It was in 1899 property accounts were transferred to the books of the York Light Heat and Power Company, and it was from some time in 1899 to the close of 1901 that the operations of this Company were reflected on the books of the York Company.

Q. Of the York Company. And the Westinghouse figures, of course, were taken on to the York books? A. That is right.

Q. At what figure did you find them taken on the York books? A. \$69,277.00.

Q. What were the additions between 1897 and 1901—between 1897 and 1899? A. July 1, 1899, \$5,760.86.

Q. Now, Mr. McShea, I want to call your attention to your Exhibit No. 6; on Page 45 of the record you were asked by Commission's counsel, have you made an analysis of the cost

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of production and purchase of electricity by the respondent as shown on the books from the records of the Company, and you said that you had. In that connection may I ask whether you personally prepared that exhibit? A. Exhibit 6?

Q. Yes. At any rate, it was done under your supervision? A. That is right.

Q. Do you have the exhibit before you now? A. Yes, sir.

Q. On Page 20 there is a statement entitled, statement of the cost of electricity purchased for the period from January 1, 1931 to June 30, 1936? A. That is right.

Q. What does the amount shown under the heading Metropolitan Edison Company, that is, column "D" represent? A. It represents the amounts paid by respondent to Metropolitan Edison Company for electrical energy.

Q. For the years 1931 to 1933 inclusive? A. 1931 to 1936, June 30, 1936, inclusive.

Q. Would you mind reading us the figures—they are very brief, Your Honor—for 1931, 1932 and 1933? A. 1931, \$312,275.50; 1932, \$290,036.18; 1933, \$213,027.94; 1934, \$143,735.49; 1935, \$182,869.67; 1936, the first six months, \$161,199.95.

Q. Can you tell us whether these amounts represent gross or net payments made by the Edison Company to the Metropolitan Edison? A. Those are the amounts paid and charged to the company by Account 413, power purchased.

Q. As far as you know they were gross amounts and represented during the period indicated actual gross disbursements made by Edison to Metropolitan Edison, is that right? A. For the purchase of electricity.

Q. Yes, exactly. A. Yes, that is right.

Q. Did you make any inquiry or examination for the purpose of determining whether any discount was allowed to Edison Company by Metropolitan?

The Commissioner: Discount from those sums.

Mr. English: Yes sir. Credits under the terms of



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the contract. To make plain our position, Your Honor, under the terms of the contract with Metropolitan Edison there is a credit.

Mr. Keesey: I am not sure that that particular contract is in evidence. They only introduced the last one.

Mr. English: I think that is correct.

Mr. LaBrum: That is in evidence in the York Railways case.

Mr. English: There was a credit allowed in 1931, 1932 and 1933 which will reduce the amount that is charged against us as power purchased.

The Commissioner: If the amount charged against you for power purchased has been reduced then by that same sum the other amount is greater.

Mr. English: Except that this is used for allocation between the steam and electric properties.

The Commissioner: What I meant, as to your general picture of net revenue, any deductions you get from Metropolitan from those figures increased the amount of net revenue.

Mr. English: No question about that. We are letting the chips fall where they will.

The Commissioner: Are those amounts appreciable in size?

Mr. English: Yes, if I may say so, in 1931 they amounted to \$32,437; 1932, \$31,915, and for the eight months of 1933, \$21,300.

The Commissioner: Where are those items reflected on the books of the company?

Mr. English: Reported under non-operating revenue.

The Commissioner: Those items of non-operating revenue as you have them are taken into consideration in some of our exhibits, are they not?

Mr. English: No, sir, they are not, that is the reason

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I am going into this question. Mr. McShea's exhibit is built upon the gross amount.

The Commissioner: Are there anywhere in these exhibits items showing your non-operating income that reflect those items?

The Witness: Exhibit 15.

Mr. English: Sheet 1, that is right.

Ledger A, Edison Electric Light Company, York, Pennsylvania, November 1887 to November 1899, produced and marked Respondent's Exhibit No. 4, E. E. M., 12/9/36.

By Mr. English:

Q. Respondent's Exhibit No. 4 shown to the witness. Mr. McShea, did you have occasion to examine this book which is called Ledger A, Edison Electric Light Company, York, Pennsylvania, November 1887 to November 1899? A. Yes, sir.

Q. Did you happen to notice an account on page marked 399 in connection with or as part of this book? A. Yes, sir.

Q. You did see that account, did you? A. Yes, sir.

Q. Did you pay any attention to it in connection with estimating the original cost of this property? A. No, sir.

Q. It is marked miscellaneous assets, is it not? A. In that book it is, yes.

Q. I am reading from the book. It is dated June 30, 1897, and there is the phrase "stock issued \$8,000, cash 12?"

A. May I see the book? I don't doubt your word.

Q. Yes. (Handing book marked Exhibit No. 4 to witness).

A. May I look through the book?

Q. Oh, certainly. A. That is right, there is.

Q. I think you told me you gave it no consideration in your estimate of original cost on this property? A. The reason for that was that we prepared trial balances at every closing beginning November 1, 1887 and continuing until the

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closing of the book, and then we went into the next book, and we found—we balanced the account, assets against liabilities, without taking that account into consideration and it appeared to us that that was some kind of memorandum account kept by the company that did not belong to the general setup.

Q. Now, in your Exhibit 23, and I will ask your attention for a moment to Sheet 2, you have an item of \$2,448.24?  
A. Yes, sir.

Q. Now, was not that amount debited to construction by Edison Light and Power Company as shown by "A" ledger of December 31, 1889?

The Commissioner: What amount are you talking about?

Mr. English: \$2,448.24.

The Witness: That is right.

By Mr. English:

Q. And doesn't that amount actually represent interest paid on interest bearing certificates that were issued by the company for loans, for construction purposes, and therefore, is in the real sense of the term interest during construction?  
A. I didn't so consider it, because I didn't know that at the time.

Q. You didn't know that fact? A. That is right.

Q. You were not familiar with the fact that under date of October 1, 1885 the company had an outstanding issue of interest bearing securities for construction purposes? A. 1885?

Q. Yes. A. The first ledger I saw was dated 1887.

Q. I see, I call your attention now to Exhibit 23, Sheet 2, which contains an item of \$9,562.04, Edison Light and Power Company. Was there anything about that to indicate that it represented license payments to the Edison Electric Light Company of New York, totalling \$18,200?

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The Commissioner: What do you mean by licensed payments?

Mr. English: This was the original Edison Company, your Honor, and most of those companies were obliged at that time to pay license fees for the right to the use of the name?

The Witness: There was an account on the balance sheet, or in the general ledger, entitled, Edison Electric Light Company of New York for stock \$18,200.

By Mr. English:

Q. Did that cause you to make further investigation as to the circumstances surrounding it? A. We inquired of Mr. Ludwig. Naturally an item of this kind, that is a question of a foreign security, and if distributed somewhere else we would like to know at the time the examination was made just what it was and why it was distributed that way.

Q. Did you receive any information through any of your associates as to an agreement which provided for the payment by the York Edison Company of York of 30 percent of its outstanding capital stock at the time of the agreement and 30 percent in additional capital stock to be issued, and for the payment of 5 percent in cash of the then outstanding capital stock which was \$40,000, and appears on Page 41 of that same ledger, ledger "A"? A. I didn't know anything about that agreement at all, and still don't. Of course, we inquired of Mr. Ludwig and he seemed to know nothing about it.

The Commissioner: I suppose this was a good act in a great number of companies at that time.

Mr. Downes: There are only two in existence today.

Mr. Miller: I don't believe you identified by Exhibit number that contract. You do propose to submit it in the record in some form?

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Mr. LaBrum: Let him repeat the answer that he makes. He may perhaps offer a substitute.

The Commissioner: You can reach that in other ways than in discussion with Mr. Miller. The witness has said that he has answered to the best of his ability. You can handle that in whatever way you like in your argument or by other witnesses or anything else that you want to offer, if you have any further questions to ask him, all right but I don't see that it solves anything or brings about any useful result asking him the same questions over after he says, "That is all I have," and that is what he does say.

(Remarks by Mr. English at his request off the record.)

By Mr. English:

Q. On Page 174 you testified to making some adjustments in figures. We were talking about Exhibit 23 at that time?

A. Yes, I believe so.

Q. That is the exhibit that has these lettered columns as I call them? A. They all have.

By the Commissioner:

Q. Is this about the donated sums? A. No, this is estimated original cost.

By Mr. English:

Q. You said you made some adjustments in the figures when we were interested in the inquiry as to the source of the figures themselves. I want you to tell me what adjustments you made? A. Well, the adjustments that I made are shown on Sheet 2 of Exhibit 23.

Q. And those are the adjustments that you had in mind when you used that expression at the last hearing, am I right about that? A. Yes, I think you are right about that.

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Q. Were there any other or additional adjustments? A. In Exhibit No. 26, which was offered this morning, identified this morning, I have details showing how the figures were determined for the various companies, excluding however, the Edison Electric Light Company and the Merchants Electric Light and Power Company, which were taken from the books.

Q. Well, Exhibit No. 26 relates only to the Peoples Company, does it not?

The Commissioner: Turn over the pages, it is for different companies. A reconciliation, Westinghouse, Red Lion, York and Windsor.

Mr. English: Yes, I missed a page.

By Mr. English:

Q. Now, Mr. McShea, you have been using the expression in these exhibits and in your testimony, computation estimated original cost of the property. What is your conception of original cost? A. To me original cost means the cost of the property at the time of installation.

Q. At the installation of the physical units? A. That is right.

Q. Do you think that in the light of what you told us of how you assembled these figures, that that is a correct phase to use? A. Yes sir.

Q. You do? A. My efforts along that line were to determine as nearly as I could the actual original cost of the property wherever I got the information.

Q. By estimating amounts of capital stock issued— A. Where I felt that the property was built out of proceeds of capital stock issued.

Q. Were reports filed for tax purposes? A. Yes.

Mr. English: That is all for the present. There may be some other things later.



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By Mr. Miller:

Q. Mr. English just asked you whether you estimated capital stock. Did you estimate any capital stock? A. No, I estimated no capital stock figures.

Q. You obtained the definite capital stock figures and on them based your estimate of original cost? A. That is right.

Mr. English: Based his estimate on the amount paid in without regard to the outstanding stock, as I understand the witness.

The Witness: I say where I could, paid-in capital stock.

Mr. Miller: I have no further questions at this time.

Mr. English: Mr. Commissioner, Mr. LaBrum has just suggested that we are still investigating these figures. I assume that we will ask Your Honor to recall Mr. McShea for further cross examination. I don't mean to cumulate it at all.

Mr. Miller: That is perfectly satisfactory.

The Commissioner: On other points?

Mr. English: Precisely so.

By Mr. English:

Q. To make it perfectly clear, Mr. McShea, you don't mean to tell us that these exhibits that you submitted represent the original cost of the property of the Edison Light and Power Company in York presently used and useful in the public service, do you? A. No sir.

By Mr. Miller:

Q. The original cost which you have estimated and placed in the record in your testimony and referred to in your testimony consist of what you estimate the original cost to be at the date of installation of the property used by the companies which have become the Edison Light and Power Company, is

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that correct? A. I made no effort to eliminate from my estimates any figures representing or purporting to represent the cost of property not used and useful.

Mr. English: I assume that we both have considerable to say about that on another occasion.

By Mr. Miller:

Q. Mr. McShea, what companies owned the property, or what companies installed the property, the original cost of which you have estimated in this record.

The Commissioner: That is a large order, isn't it, to answer that question.

The Witness: You mean what were the original constituent companies.

The Commissioner: He meant who installed the property or else who owned the property.

By Mr. Miller:

Q. Yes, owned or installed it? It was not the respondent, in this proceeding who installed that property? A. Well, the respondent installed a great deal of it.

By the Commissioner:

Q. In later years? A. It was the respondent or its predecessors the Peoples, Westinghouse and York and Windsor and the Red Lion and the others.

The Commissioner declared a recess of five minutes.

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information. You had nothing before you but the tax report? A. The tax report in the files of the Secretary of the Commonwealth.

Q. Showing a statement in connection with the application for the charter? A. No, that was in connection with the Peoples Company.

Q. What did you find in the office of the Secretary of the Commonwealth with regard to the Red Lion Company? A. March 26, 1903 there was filed in the office of the Secretary of the Commonwealth papers concerning the increase of indebtedness from nothing to \$3,000. The date of the resolution of the Board of Directors was January 10, 1903. The Treasurer's return filed with the Secretary of the Commonwealth on May 19, 1903 certified that \$2,500 of additional indebtedness was issued for cash.

Q. And that information is the sole source of the opinion that you have expressed in your testimony, I take it? A. The examination of the tax returns and this information, that is correct.

Q. Now, in the Westinghouse Company you disregard the issue of \$30,000 of stock, and yet in substantially all these other companies you predicated your figures as to original cost precisely upon that information, didn't you? A. I wouldn't say that I disregarded anything.

By Mr. LaBrum:

Q. The York and Windsor, not the Westinghouse? A. I didn't disregard any of the information that I found. I tried to use whatever I thought would produce the correct result as nearly as could be obtained.

By Mr. English:

Q. And yet you have, I think, already told us, so far as York and Windsor is concerned you didn't take into consideration \$10,000 of capital stock, am I right about that? A. Not

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that I didn't take it into consideration, I took everything into consideration. I rejected the use of it.

By the Commissioner:

Q. And you gave your reasons for doing so? A. That is right.

By Mr. LaBrum:

Q. Why did you reject it? A. For the reason that the York and Windsor Electric Light Company was formed by merger and consolidation under an agreement dated April 1, 1905 between the Red Lion Electric Light Company and three non-operating companies. Of course, I found in making examinations that where a company is organized and capital stock is issued originally for property it is sometimes issued at a par value greatly in excess of the cost of the property, and since I was having an account for only \$11,650 here in the case of Red Lion I believed that there was not \$30,000 of cost value behind the issue.

Q. What led you to that belief. Did you examine the records in this case to find out whether or not the stock was issued far in excess of its actual value? A. I already told you that I have not seen the records of Red Lion because there didn't appear to be any.

Q. I am talking about York and Windsor. I am talking about the \$30,000 issued capital stock which shows on all reports of York and Windsor and ask you why you ignored that altogether, when you considered it in every other case but this one? A. I told you the reason.

Q. I want to know, did you examine this particular record to find out whether or not the reason which you gave existed in this case, to wit, that the capital stock sometime was issued greatly in excess of its value? A. That is right.

Q. Did you examine the record in this case to ascertain

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Mr. English: Oh, certainly. I assume we will do that when our turn comes. I would be rather glad to introduce it now, but I was afraid Mr. Miller would object.

By Mr. English:

Q. I call your attention now to Page 194 of your testimony, with special reference to your answer at the bottom of the page, where you say, according to the tax reports from 1907 to 1913 the capital stock authorized amounts to \$37,000 during the entire period.

The Commissioner: This is now the York and Windsor property?

Mr. English: That is right, sir.

By Mr. English:

Q. This referred to Exhibit 23, Page 1, where you say, further space provided for the amount of the paid in capital stock was blank from 1906 to 1911 inclusive. In 1913 the amount of paid in capital stock is shown at \$30,000. In 1907 the assets are shown as value of property in the amount of \$30,000. \$30,000 was again used in 1908. In the report for 1909 the cost of Red Lion was shown at \$20,000, the cost of equipment at \$15,000, and the real estate and buildings at \$2,000. In 1910 the cost of Red Lion was shown at \$7,000, cost of equipment at \$7,500, and the cost of real estate and buildings at \$1,500. Now, in 1909 the property values as shown by the capital stock reports changed or decreased from \$37,000 in 1909 to \$27,000 in total in 1910. While personally I didn't think there was a decrease in the cost or the value of the property between 1909 and 1910 so in order to play safe I used \$11,650 for the entire bond issue in 1906 at \$60,000 and started out with those two figures? A. That should be \$11,650 and the entire bond issue.

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Q. Did I misread it? A. No, you read it correctly.

Q. Isn't it a fact that at the York Company formerly the Windsor Company had outstanding \$30,000 of capital stock at that time? A. That is correct.

Q. Isn't it also a fact that the time the company had \$60,000 in bonds outstanding? A. That is correct also.

Q. You said something also, and I refer now to Page 192, about the fact that the Red Lion Company was built out of capital stock subscriptions. Now, what information did you get from the books of the company which in your judgment justified that statement?

The Commissioner: Doesn't the long answer on the bottom of Page 192 explain how he arrived at that, the latter part said why he did it?

Mr. English: I am asking him now what information he found in the books of the company that justified that statement.

The Witness: There were no books for the Red Lion Company.

By Mr. English:

Q. You know as a matter of practical experience that the company might construct a plan out of borrowed money, do you not? A. Oh, yes. I also know that they may make temporary loans and later pay them out of earnings.

Q. That is correct. But there is nothing in the records to justify the opinion that you expressed, and your treatment of this company as being built out of stock subscriptions, is there?

A. Outside of the testimony I gave on direct examination this morning about the finding of evidence of indebtedness in the office of the Secretary of the Commonwealth, I believe that that is a correct statement.

Q. Of course, we may not find ourselves in perfect harmony as to that. I am interested now in getting the source of your



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whether that was a fact? A. I examined all the records I could find.

Q. Did you find that was a fact in this case? A. That was my conclusion on the information I had.

Q. What information did you have? Let us have the information that you concluded it from? A. I told it to you at the last hearing. I also gave it again here.

Q. Let me have it again. What was the information upon which you based your conclusion? A. Capital stock tax reports.

Q. Let us go step by step. Capital stock tax reports showed \$30,000 issued stock, is that correct? A. That is right.

Q. Let me have the next one? A. Capital stock tax reports of Red Lion.

Q. Capital stock tax reports of Red Lion. What did the capital stock tax reports of Red Lion have to do with the York and Windsor Company? A. Because the Red Lion Company passed out of the picture and became part of the new York and Windsor. York and Windsor is really a continuation of Red Lion.

Q. That is correct. Now, we start with that basis. Now, we are down to the \$30,000 issued capital stock. Do you know whom that was issued to? A. I have a copy of the agreement of merger and consolidation up in my office. If it is not there I don't know where the information might be.

Q. Again coming back to the thing that I am trying to find out, which is: Why did you ignore the issued capital stock in this case, York and Windsor and use it in every other case in arriving at your estimated original cost of the property? A. I already told you that, Mr. LaBrum.

Q. You have not given any reason for ignoring it. You say because Red Lion passed out of existence, and that only accounts for \$11,650. What became of the difference? A. I have known of cases where capital stock was issued for nothing.

Q. I want to know of this case. I am talking about this

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particular case. What were the facts in this particular case?

A. I told you, Mr. LaBrum, several times now, and I don't know what more I can do.

By Mr. English:

Q. That is, you have nothing further to add? A. That is right.

Mr. LaBrum: If Your Honor please, I don't think that is a very satisfactory explanation. Here we have an exhibit predicated almost entirely on the issued capital stock, and in this particular case, York and Windsor, because it suits his purpose he throws it out, because he has heard that some—

The Commissioner: Just a minute.

Mr. LaBrum: I want the facts.

The Commissioner: Where it suits his purpose.

Mr. LaBrum: I only want to know the facts. Why did he do it?

The Commissioner: This witness has one purpose, and that is the same purpose that I and everybody else in connection with the Commission has, and that is trying to get at the facts.

Mr. LaBrum: Yes, and I am asking him the facts.

The Commissioner: That is the only purpose we have, and there is no purpose to be suited otherwise.

By Mr. English:

Q. On Page 174—

Mr. LaBrum: I don't think he has answered the question.

The Commissioner: He said he has answered it as far as his ability goes.

Mr. Miller: He has answered it several times.

*H. Root Palmer—For Commission—Cross*

## AFTER RECESS:

H. ROOT PALMER, recalled.

*Cross Examination*

By Mr. Keesey:

Q. Mr. Palmer you testified that you were Vice President of the Harrisburg Light Heat and Power Company, was it for about eight years? A. Approximately yes.

Q. And they had a steam plant, did they, a steam heat plant? A. Yes sir.

Q. Was it operated by itself or in conjunction with the generation of electricity? A. By itself. Operating as steam heating primarily, generating electricity as a by-product.

Q. It was originally built for the generation of steam? A. It was an old generating system which had been converted into a steam heating station.

Q. In the course of your duties with that company did you have any occasion to allocate the parts used for steam and the parts used for generating electricity? A. Yes sir.

Q. You did that? A. Yes sir.

Q. For what purpose? A. Rate making.

Q. For steam, rates for steam? A. Yes sir.

Q. Is that the only occasion on which you attempted to allocate the different parts of a joint steam heating and electric generating plant? A. Yes sir.

Q. And it was for what purpose: the company's own private use or for the Commission, or what? A. A rate proceeding before the Commission.

Q. In which you were testifying in behalf of the Steam Heat Company? A. Yes sir.

Q. When was that? A. 1923 or 1924. I don't know exactly, but about that time.

Q. What was the proceeding, a proceeding instituted by

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whom? A. Steam heat customers of the city of Harrisburg against the steam heat rates.

Q. So what you were doing in that proceeding was attempting to justify the cost of steam that the company was charging? A. Yes.

Q. Of course, you were testifying for the company. Your purpose in that case was to allocate everything to steam production that you reasonably could? A. No sir.

Q. What did you do? A. Based upon facts as nearly as they could be secured.

Q. But you brought out all the facts useful to the company, I assume?

The Commissioner: I don't know, Mr. Keesey, whether that is fair to the witness. He was fair, he said to bring out the facts.

Mr. Keesey: I will withdraw the question.

The Commissioner: I think most of us have sat through a number of rate cases. I don't think he was sitting up nights trying to injure his company, of course.

Mr. Keesey: I withdraw the question.

By Mr. Keesey:

Q. Did you use the same theory of allocation in that case as you did here? A. Used the basis of use as agreed upon between the complainant's and the respondent's engineers.

Q. In this case you had instruction to go to York, as I understood you at the first hearing, to determine the use that was made of the various parts of this joint plant, and allocate to steam production the parts that you thought were used solely for that purpose, and allocate to electric generation the parts and equipment that were used solely for that purpose, and the parts used jointly you allocated between the two uses in accordance with your judgment? A. Yes sir.

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Q. Then in this case you allocated to the production of steam approximately \$841,000 to the generation and transmission of electricity, approximately \$503,000? A. I think it is the reverse.

The Commissioner: As shown on what exhibit? Exhibit 18.

Mr. Keesey: Exhibit 18, yes.

The Commissioner: \$841,000 for electricity and \$507,000 for steam.

Mr. Keesey: Yes.

Mr. Miller: Are you using the original 18, or the revised exhibit?

Mr. Keesey: I am not using the revised exhibit.

By the Commissioner:

Q. There is only \$100 difference in the revised exhibit, is that correct, Mr. Palmer? A. \$107.

Q. Exhibit 29 gives the revised figures, does it not? Isn't that correct? A. Sheet 10 revised.

Mr. Miller: That is correct.

By Mr. Keesey:

Q. Then you come to the conclusion that no part of the property that was allocated to the production of steam should be included in the Electric Light Company's rate base? A. The allocation of the property to steam production was in my judgment necessary for the generation of steam.

Q. Yes; I understand that, but then didn't you go further and state the opinion that no part of the property so allocated should be included in the Edison Company's rate base?

The Commissioner: You didn't mean that, that no part of the property. You meant that no amount indi-

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cated by the \$507,000, that no part of that property is included in the Electric Company's rate base.

Mr. Keesey: That is what I intended to say. I meant the part allocated by him to steam generation.

The Witness: That is correct.

By Mr. Keesey:

Q. Now, I was not sure on what theory you thought that that should be excluded, whether it was because it was used in steam production or whether it was because production of steam was in your opinion made at a loss? A. Primarily the steam generating facilities are for steam heating purposes; and the generation of electricity is incidental or a by-product in connection with steam generation for steam heating.

Q. For the Electric Company, which owns title to all the property, doesn't it? A. I believe it does.

Q. If the Electric Company had generated and sold steam at a profit would you still think that that part of the plant devoted to the production of steam should be excluded from the rate base? A. I don't know until that condition existed and was investigated.

Q. You really threw it out because it was not making a profit, didn't you? A. Yes.

Q. And, therefore, in your opinion was a burden on the electric consumers? A. Yes.

Q. I thought I understood, but I just wanted to make sure? A. Yes, sir.

Q. Now, when you made up Exhibit 20, showing the cost of operations and the amount received from steam and showed that the steam operations were conducted at a loss, did you know about the credits which the Edison Company received in 1931, 1932 and for part of 1933, which Mr. McShea testified about this morning?



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The Commissioner: You mean as to electricity purchased wholesale?

Mr. Keesey: Perhaps I had better show Mr. Palmer the contract.

The Commissioner: You mean credit for that particular amount?

Mr. Keesey: Yes.

By Mr. Keesey:

Q. Mr. Palmer, I show you this contract-dated August 1, 1921, between the York Haven Water and Power Company and the Edison Light and Power Company, and call your attention to paragraph 9, whereby the Edison Company agrees that if for any reason Power Company shall at any time be unable to generate and distribute sufficient electrical energy to supply all of its customers, Edison Company will upon reasonable notice in writing generate through its own steam power plant electric energy and use same in certain respects for the benefit of the Power Company, do you want to read this? A. I don't object to your reading it.

Q. Under the terms of this contract Power Company, York Haven Company, paid to the Edison Company, in accord with Mr. McShea's testimony in 1931 \$32,000; in 1932, \$31,950—

The Commissioner: Not according to Mr. McShea's testimony. Mr. English gave those figures, and those figures were reflected in another account.

Mr. Keesey: When Mr. McShea was on the stand this afternoon he referred to an exhibit No. 15, in which it is set forth that the Edison Company received from the Metropolitan Edison Company, which was subsequently I might say the York Haven Water Power Company, on account of the credits in this contract in round

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figures in 1931, \$32,400; in 1932, \$31,950, and for the eight months of 1933, \$21,300. Now,—

Mr. Miller: Do you mind stating the account in which that was listed, Mr. Keesey?

Mr. Keesey: It is Line 26, in Exhibit No. 15, Sheet 1.

The Commissioner: Mr. McShea didn't testify to that. It was brought out by Mr. English in the exhibit showing amounts paid to Metropolitan Edison by Edison Light and Power for wholesale power. Those figures were given by Mr. McShea, and the exhibit was read by Mr. English and agreed to by Mr. McShea, and then Mr. English asked Mr. McShea whether he knew that under the contract there were certain amounts paid back, so to speak, by Metropolitan Edison to Edison Light and Power, and Mr. McShea as I recall it said he didn't know about the contract, but that the amounts which Mr. English then recited as amounts returned, or credits, were shown in another exhibit by Mr. McShea under a separate account. I think that was the mechanics of the thing this morning.

Mr. Miller: That is right, this morning.

The Commissioner: However, Mr. McShea didn't testify that these amounts were paid back for that purpose, but said that those amounts were included in his setup in another account.

Mr. Miller: I merely wanted Mr. Keesey to mention the account in Exhibit 15 under which these amounts appear. I don't question the amounts themselves, nor that they were repayments under that contract.

The Commissioner: I am only calling attention to the fact that Mr. McShea didn't testify to the fact that those amounts were paid back by Metropolitan Edison. There is a distinction without a difference.

*H. Root Palmer—For Commission—Cross*

the witnesses have, that with other factors with that it does.

By Mr. Keesey:

Q. Did you read, Mr. Palmer, the existing contract between the Edison Light and Power Company and the Metropolitan Edison Corporation and the Safe Harbor Water Power Company and the Pennsylvania Water Power Company? A. Yes, sir.

Q. There is a similar agreement in that contract, is there not, that the Edison Company maintain this plant, this steam plant as a standby for generating electricity? A. Yes, but there is also a provision in there that the York Edison Company shall take all their requirements for electricity except those generated in connection with the steam heat system.

Q. That is right. A. And that electricity generated, furnished in connection with the steam heat system is calculated on the billing price and paid for in addition by the York Edison Company to the expenses of generating it.

Q. For the expenses of generation, was what I was coming to as soon as I could find the exhibit. Now, Mr. Palmer, on Sheet No. 2 of Exhibit 20 you show that the cost of steam generation was \$88,805? A. Yes, sir.

Q. That the cost of electric generation was \$8,958? A. Yes, sir.

Q. Did you give any recognition anywhere in this exhibit, or any other part of your testimony, for the value of the electricity generated at the steam heating plant to the Edison Company? A. No, sir, not in that exhibit.

Q. Did you anywhere in any of your calculations of the value of this plant to Edison Company? A. Yes, sir.

Q. Where? A. But they have not been submitted as exhibits. I did in my consideration of it.

Q. But it is not in the record? A. No, sir.

*H. Root Palmer—For Commission—Cross*

Q. Well now, is it not a fact, as shown on Exhibit No. 6 on Sheet 29 that the electricity generated in 1931 was 2,877,000 kilowatt hours in round figures?

The Commissioner: From the steam plant?

Mr. Keesey: Yes.

The Witness: 2,877,766.

By Mr. Keesey:

Q. Yes. In 1932 there were generated by the steam plant 3,800,000 kilowatt hours plus? A. 3,827,850.

Q. And in 1933, 3,500,000 plus? A. 3,512,120.

Q. 1934, 3,266,000 plus? A. 3,266,700.

Q. And in 1935, 3,160,000 kilowatt hours plus? A. 3,161,700.

Q. And in 1936, for the first six months, 1,988,400? A. I don't have any in 1936.

Q. Well, if that statement is shown on Exhibit No. 6, Sheet 29, put in evidence by Mr. McShea, you would accept it?

Mr. Miller: The Commission will agree that that figure is correct, Mr. Commissioner.

By Mr. Keesey:

Q. Now, from the generation of the steam plant, plus the electrical part of it, didn't the Edison Company receive without any cost other than you have referred to in Exhibit 19, the value of those kilowatt hours? A. For operating expenses only.

Q. But they did receive the benefit? A. For the operating expenses only that you include.

Q. Yes. A. There are no fixed charges included.

Q. According to your Exhibit 19, which I understand includes no fixed charges? A. Correct.

Q. They did receive the benefit, didn't they? A. For the kilowatt hours.

*H. Root Palmer—For Commission—Cross*

Q. In 1931, the average cost of kilowatt hours if they had purchased them would have been 9.27 mills, wouldn't they—I am referring to Sheet 2 of your Exhibit 19? A. Yes, sir.

Q. And in 1932 the average cost would have been 9.52 mills? A. Yes, sir.

Q. And in 1933, 9.28 mills? A. Yes, sir.

Q. In 1934, 9.07 mills? A. Yes, sir.

Q. And in 1935, 8.17 mills? A. Yes, sir.

Q. And you don't have the average cost for 1936? A. No, sir.

Q. Now, in addition to that didn't the Edison Company receive the benefit in 1931, 1932 and 1933 of the standby credit paid by Metropolitan Edison Company? A. That was credited I understood from Mr. McShea's testimony to other revenue.

Q. But it resulted from maintaining and operating a steam plant, didn't it? A. Non-operating revenue, yes, sir.

Q. I mean the credit was due to the operation and maintenance of this company plant? A. Revenue to the company.

Q. When you say revenue, Mr. Palmer, you are not talking in technical accounting terms, you mean a receipt to the company, a receipt of money from the Edison Company and credited as against power, however it was paid, a benefit to the company received by reason of the operation and maintenance of the steam plant? A. Yes, sir.

The Commissioner: Whether it was cash received or credit, it meant paying that much less to Edison Company for the current.

Mr. Keesey: That is right.

The Commissioner: The total payment was reduced thereby.

Mr. Keesey: The point I am making is that it was due to the operation of the steam plant that they got the credit.

*H. Root Palmer—For Commission—Cross*

By Mr. Keesey:

Q. When at the last hearing you testified as to the various amounts received in different years for the sale of steam, the amount received by the Edison Company for the sale of steam, or the credit received to complete the picture you did take into consideration these other values that the Edison Company got from the operation of the steam plant, didn't you, that is, the credit from the Metropolitan Edison Company of the value of kilowatt hours, that are incident to that operation? A. Yes, sir, that would reduce the loss of the Edison Company by that amount.

Q. Of course, in that amount the Edison Company ought to be charged with the cost of generating electricity and shown in your Exhibit No. 19. For instance, let me try to make myself clearer: In Sheet No. 2 of Exhibit 19 you show that the cost of generating steam was \$88,805, and you show on Sheet No. 1, that the receipts from the Steam Company were \$81,709.84? A. Yes, sir.

Q. Now, the benefit to the steam company would be increased in that year, would it not, by a credit of \$32,400, and the value of the kilowatt hours generated less the cost of that electric generation is shown on your Sheet No. 2 as \$8,958?

A. For 1931?

Q. Yes. A. The total cost of generation was \$117,975.76. The credit for steam—

The Commissioner: Just a minute. What he is trying to correct is the cost of \$88,000 for the generation of steam. He says it is \$117,000, does he not?

The Witness: \$117,975.00 was the total cost of operating the steam plant, less a credit of \$81,709.84 for steam sold to the Steam Heating Company, leaving a net cost of generation of \$36,265.92.



*H. Root Palmer—For Commission—Cross*

By Mr. Keesey:

Q. Now, will you look at Sheet No. 2 of Exhibit 20, please?  
A. Yes sir.

Q. There you state the total cost of operating the steam plant was \$117,975.76? A. Yes sir.

Q. And you said that the cost of operating the steam generating portion of that plant was \$88,805? A. Yes sir.

Q. And that the cost of electric generation was \$8,958? A. Yes sir.

Q. And that the balance of the cost \$20,213, was the cost of transmission? A. Yes sir.

Q. Which had nothing to do with either steam generation or electric generation, did it? A. Yes sir.

Q. So that shows that in that year for which the Edison Company received \$81,709.84 the cost of that according to your calculations was \$88,805? A. Yes sir.

Q. Now, what I want to show, and what I understood you agreed with me, that in estimating the cost of operating that plant of the Edison Company, you should take into consideration the \$32,400 credit received by the Edison Company in 1931 from the Metropolitan Edison Company, and you should also take into consideration the value of the kilowatt hours produced in the course of that operation, which in that year were 2,877,766? A. Yes sir.

Q. Now, Mr. Palmer, you have looked on this plant as being primarily devoted to the generation of steam, and only incidentally used for the generation of electricity, and in part in support of that position you cite part of the contract which requires the company to buy all of its energy requirements except what is used in the generation of steam? A. Yes sir.

Q. Would your opinion as to the purpose of that plant or the use of that plant be affected at all by the necessity of using it as a standby plant in case the source of purchased power would be unavailable? A. No sir.

*H. Root Palmer—For Commission—Cross.*

The Commissioner: When did that happen?

Mr. Keesey: Last January or February when we had our flood.

The Witness: The capacity available in excess of the Steam Heat Company requirements—

Mr. Keesey: And not very long. I don't want to be misleading.

The Witness: The capacity available for electric generation in excess of the requirements of the Steam Heat Company is very small indeed.

By Mr. Keesey:

Q. How much? A. Without making an accurate calculation it is approximately 3,000 kilowatts by use of the boiler capacity installed with none available for reserve in case of a failure.

Q. You mean that is the most they could produce down there, 3,000 kilowatts? A. In excess of the steam heat requirements. That does not include the electricity generated in connection with the steam heat system. That includes the electricity generated in excess of the steam heat requirements.

Q. Which would make about five or six thousand altogether? A. Approximately 5,000 total.

Q. 5,000 total? A. Between 5,000 and 6,000.

Q. Don't you think it might be 7,500? A.—It might be for very short periods, not reliable for any lengthy period.

Q. I am only talking about emergency periods.

The Commissioner: We are talking about reliable service.

By Mr. Keesey:

Q. What do you think would be the capacity on a reliable basis? A. Well, the maximum demand on the heating system has been 110,000 pounds of steam per hour. During that pe-

*H. Root Palmer—For Commission—Cross*

Mr. English: We will stipulate the amounts by agreement if that is agreeable to Mr. Miller, so we get that information before the Commission.

Mr. Keesey: It is stipulated that the amounts shown on Line 26 of Sheet 1, Commission's Exhibit 15, represent the amounts paid by Metropolitan Edison Company to the respondent in 1931, 1932 and 1933 by reason of Paragraph 9 in the agreement between York Haven Water Company and Edison Light and Power Company just referred to, and the other provisions of that agreement relating to the charge.

The Commissioner: Now, Mr. Keesey, are you by that stipulation attempting to state, and are you stating that all the amounts paid over by Metropolitan Edison to Edison Light and Power Company are in consideration, of what amounts to a standby service, is that the picture?

Mr. Keesey: That is true.

The Commissioner: Then as I understand it in this long agreement there is no other provision which provided that for various other reasons there may be a refund by Metropolitan Edison, is that correct?

Mr. Keesey: That is correct.

The Commissioner: That is the only consideration under which payments are paid back.

Mr. Keesey: That is the only consideration.

Mr. Miller: Mr. Commissioner, I believe I can agree to that stipulation, but I would like an opportunity to check with Mr. McShea, so that if there is any respect in which the stipulation should be modified we can modify it.

Mr. Keesey: Oh, surely. I can examine Mr. Palmer on the assumption that these amounts are right, but I thought it was easier to give the amounts here.

*H. Root Palmer—For Commission—Cross*

Mr. Miller: That is perfectly satisfactory.

By Mr. Keesey:

Q. Now, did you know about those credits, Mr. Palmer when you made up Exhibit 19? A. Exhibit 19?

Q. You can answer that, can't you, just yes or no? A. No, they were not used.

By the Commissioner:

Q. Did you know about them? A. No, sir.

The Commissioner: Mr. Keesey, is it your contention that because under a contract or agreement made between Edison Light and Power and Metropolitan Edison or its predecessor, that because Edison Light and Power maintained a standby service through the use or possible use of its steam heating plant for the generation of electricity, and thereby secured some credits from Metropolitan Edison that that of itself justified the inclusion in the rate base of this steam heating plant. The point I raise is whether it is your contention, and I understand by way of Mr. English that it is a fact, and you can, of course, properly contend to that, but what I mean is, if that were the only factor in the situation does that by itself justify the inclusion of the steam plant in the rate base of the Edison Company?

Mr. Keesey: Under that reasoning we disagree entirely with Mr. Palmer's theory.

The Commissioner: Will you answer yes or no as you just asked the witness to do?

Mr. Keesey: No, I can't answer that yes or no. You say does that fact alone?

The Commissioner: Yes.

Mr. Keesey: No. I would also like to explain as

*H. Root Palmer—For Commission—Cross*

amount of power that we can purchase to a point that we have to use this power plant.

The Commissioner: It never happened before, except that one time.

Mr. Keesey: We frequently have trouble, or we used to at any rate with the Pennsylvania Water Power Company. Whether that is changed by the Safe Harbor Dam I don't know. You see their supply is primarily for Baltimore.

The Commissioner: That has nothing to do with the point of whether your steam plant is a proper reserve supply or not. I am asking as to the mechanical set-up in the territory.

Mr. Keesey: Each of these companies guarantees, as I recall the contract, to supply us with their respective parts of the load. Now, if there is a failure—

The Commissioner: And they don't limit you in capacity?

Mr. Keesey: Under ordinary circumstances they are willing to sell all they can sell, but if they get into difficulty their primary needs are elsewhere than York.

The Commissioner: The point I make is that situation has not developed except in time of flood condition, that has never happened in the memory of anybody living. It might happen again, of course.

Mr. Keesey: If we get absolute guarantees we will pay more for our power. If this plant is used as a standby the cost per customer could not be much more than a half cent a year, and I think they are glad to pay it for the assurance that they get power.

The Commissioner: Whether your source of supply were limited to the amount you now use, or whether there is excess there, under ordinary circumstances they would be glad to pay it, do you think?

*H. Root Palmer—For Commission—Cross*

Mr. Keesey: In the last five years there has been an excess all over the country. If we get a straight guarantee we have to pay more than we pay now. That is my experience in negotiating these contracts, and that is all I can say.

By Mr. Keesey:

Q. Mr. Palmer, will you take your Exhibit No. 18, please—I would like to say before proceeding with these questions, that we don't agree with the witness' theory, we don't agree with his facts even on that theory, but I don't want to repeat that every time I ask a question.

Mr. Miller: I might clarify the record at this point by saying that it is the theory of the Commission that in addition to the fact that the steam generating property operated in connection with the supply of electricity results in a loss to the Electric Company that we don't feel that the consumers of the Electric Company should be called upon to pay a return on the property used for the generation of steam.

By Mr. Keesey:

Q. The second sheet of the schedule, Exhibit 18, there you allow park driveway 75 percent for electric use and 25 percent for steam use. On what basis did you make that allocation; I mean, what reason do you have for dividing it into those proportions? A. You are referring to the sections next to the operating office, shop and stores?

Q. What is marked on here, parking driveway. The area of it is 5,343 square feet, it is up near the northeast corner?

A. That is Schedule 1, 5,343 square feet, Schedule 1 revised is 6,309 square feet.

Q. I don't care about the number of square feet at all. All



*H. Root Palmer—For Commission—Cross*

riod of maximum demand there were in operation two of the 600 horsepower boilers, two of the 520 horsepower boilers, and one of the 520 horsepower boilers which was equipped with the Cox stoker, that is, for the use of small anthracite coal. The 600 horsepower boiler was equipped with a more modern stoker and can produce more steam, a higher rating. The other two 520 horsepower boilers are equipped with Rooney type, not suitable to carry the load without the 600's with the Westinghouse Rooney type. That left in reserve only at that time one 520 horsepower boiler equipped with a Cox stoker. Had one of the 600 horsepower boilers failed at that time there would only have been available to replace it one 520 horsepower boiler equipped with a Cox stoker, which with its equipment could not take the place of the 600. On that condition there was practically no steam available for electric generation except the excess that didn't go through the steam heat turbine.

Q. They have two turbines, don't they? A. One high pressure turbine and one low pressure turbine.

Q. Do they use both ordinarily, do you know? A. Well, the low pressure turbine is used in connection with the steam heat. The steam going through that goes to the Heat Company. The high pressure turbine, the steam going through that is condensed.

Q. Would you think there might be 7,500 KW capacity, but there would be no reserve if one of the boilers would break down? A. Yes sir.

Q. But as long as the boilers work they could produce 7,500? A. For a short period.

Q. As long as the boilers continued to work?

The Commissioner: As long as nothing blew out.

Mr. Keesey: Well, we have never had anything to blow out.

*H. Root Palmer—For Commission—Cross*

The Commissioner: Has it ever been used at full capacity for any length of time?

Mr. Keesey: I think it was last February.

The Commissioner: For any length of time?

Mr. Keesey: No, just for a day, I guess. I don't know. I have no business to answer that.

Mr. Wayne: During the flood in February.

The Commissioner: For a very short period?

Mr. Wayne: For a good many hours. Depends on what you call a short period.

The Commissioner: It was not more than a day?

Mr. Wayne: It was the better part of two days.

The Commissioner: Mr. Keesey, there is no contention on the part of the Company, is there, that if the steam heat plant were not there and in this picture at all that the Edison Light and Power Company would have any difficulty whatever in getting all it can sell from this source?

Mr. Keesey: They couldn't get it for a day and a half last February. The town would have been dark.

The Commissioner: That was a catastrophe of a nature that happens once in fifty years, that type, but I mean outside of that one time when you couldn't get it, the source of your wholesale power is available and you have plenty of reserve supply, don't you?

Mr. Keesey: Yes. I don't wish to get into an argument at this time, that is part of our case.

The Commissioner: I am not attempting to get into an argument. I am asking you for information, isn't that true?

Mr. Keesey: Under ordinary circumstances we can get all the power that we need, but it doesn't take as big a flood as we had last winter in order to reduce the

*H. Root Palmer—For Commission—Cross*

Q. Is there any incidental charge to the Edison Company in connection with the use of its steam heat plant other than the mere generation of electricity? Does it have or could it have any effect in reducing the cost of the power purchased?

A. Not under the present power contract.

Q. You think not? A. I understand so.

Q. And that is the theory on which you have made this allocation that you have just made? A. I assume that that is included with the billing in addition to the cost of generating.

By Mr. LaBrum:

Q. Mr. Palmer, if by reason of a contract or otherwise, it was necessary for the Edison Electric Company to operate a steam heating plant in order to generate electricity for cases of emergency or as a standby would that alter your conclusion as to allocation? A. No, sir.

By Mr. Miller:

Q. Is a credit on a purchased power any longer given on account of standby service? A. Not under the new contract made in—the early part of 1935, January. I recall at the moment there are no credits for standby.

Q. Then any value which this Steam heat plant might conceivably have on account of standby availability is not taken into account in contracts with the Metropolitan Edison or the other companies supplying purchased power, is that right?

A. Not at the present time, not since the new contract.

Q. Do you know whether last winter was an exceptionally cold or merely an exceptionally stormy winter, do you know, Mr. Palmer? A. No, I don't.

Q. Now, Mr. Keesey asked you various questions relative to rural electrification service or industrial consumers. Do you consider that service rendered to York Railways is comparable to rural service? A. I don't.

*H. Root Palmer—For Commission—Cross*

Q. Is the basis of rates for rural consumers always cost?

A. In my judgment, no.

Q. Are not rates to rural consumers based on an entirely different conception than those applying to other classes of consumers?

Mr. LaBrum: We object to this. What difference does it make?

Mr. Miller: Mr. Keesey seemed to think it did.

The Commissioner: Mr. Keesey opened the question.

Mr. LaBrum: He said he didn't know a thing about rural electrification or rural rates.

By Mr. LaBrum:

Q. Isn't that correct, didn't you say you didn't make an investigation of rural electrification or rural rates? A. Right.

By Mr. Miller:

Q. Mr. Palmer, is this service rendered to York Railways Company rendered to a consumer of the Electric Company. In other words, is it rendered at arms length? A. No sir.

Q. Is it rendered to an affiliate—

Mr. LaBrum: Without some definition of the word—

By Mr. Miller:

Q. It is rendered to an affiliate of the Electric Company?

Mr. Keesey: Under a schedule filed by the Company and approved by the Commission.

The Commissioner: I would be able to follow who is testifying. Are you asking a question, Mr. Miller?

Mr. Miller: Yes, I was trying to develop by question and answer this fact:

*H. Root Palmer—For Commission—Cross*

Q. I am speaking now of only the 100 percent allocation?

A. Yes sir.

Q. They are owned by Edison? A. I assume they are.

Q. All the buildings? A. I assume they are.

Q. And they are not moveable. Do you think those buildings should be charged to the rate base of the York Steam Heat Company? A. The values?

Q. Yes. A. Yes sir.

Q. Even though they don't own them? A. Yes sir.

Q. Even though the courts have held that property not owned by a utility cannot be valued by it in estimating a rate base? A. It has been done.

Q. Now, if, Mr. Palmer, it should be decided that the maintenances of the standby plant by the Edison Company was reasonable and permissible then that decision would affect your allocation, wouldn't it? A. If that could be done.

Q. What I mean, if the officers of this company have determined that they need a standby plant and the Commission would agree with that determination, then these allocations would be entirely upset; of course, wouldn't they? A. These allocations would not determine the answer then.

Q. What? A. These allocations would not determine the answer in that case.

Q. They would not apply at all, would they? A. If the Commission decided it?

Q. These allocations would not apply to a situation like that? A. Certainly not.

Q. Of course, most of these—well, all of this machinery that you have allocated 100 percent to steam is needed in the generation of electricity by steam isn't it? A. All the—

Q. All of the boilers, chimneys, pumps and so forth, everything except the equipment that ties up the boiler with the Steam Heat Company mains, everything else would be needed in the generation of electricity by steam? A. Yes sir.

*H. Root Palmer—For Commission—Cross*

Q. Now, at the plant there is equipment consisting of rotary transformers and steam turbine equipment that I think was valued in round figures at around \$84,000, and that you said should not be included in the rate base of the Edison Company because they were solely in supplying current to the York Railways Company, and because that current was supplied at loss?

The Commissioner: Did Mr. Palmer say it should not be incorporated in the rate base because it was supplied at a loss?

Mr. Keesey: That is what I understood him to say.

The Commissioner: Will you refer to the testimony where he said that. Not the fact that he said it was supplied at a loss, but giving that as a reason why it should not be included in the rate base. That is what I want to know, where he said that.

Mr. LaBrum: It is on pages 118 and 119.

The Commissioner: Pages 118 and 119. You are interrogating the witness at Page 118.

Mr. Keesey: What I am referring to, Mr. Commissioner, is on Page 18, the question is with reference to this, speaking with reference to this equipment which I think he approximately valued at \$84,000.

The Witness: Approximately, yes.

Mr. Keesey: The question was, then your conclusion that it should be excluded from the Edison Light and Power Company valuation of Edison property is that according to your figures Edison Light and Power Company was selling current to be used by York Railways Company at a loss, at less than it cost it, is that right, and the answer is, yes sir.



*H. Root Palmer—For Commission—Cross*

By Mr. Keesey:

Q. Mr. Palmer, you did testify at the last hearing, didn't you, that this equipment used for supplying York Railways Company only— A. Yes sir.

Q. Amounting to about \$84,000 should be excluded from the Edison rate base because current was supplied to the York Railways Company at a loss, of—

The Commissioner: That was part of the picture. Have you read the whole question and answer.

Mr. Keesey: I think I have a right to ask him about the various parts of his testimony.

The Commissioner: You certainly have.

The Witness: I think my testimony at that hearing was in treating of this property one of two courses may be followed: One, the property may include reproduction cost, estimating property used and useful in public service by respondent, and if the rate for service rendered by such equipment is found to be non-compensatory the rate itself could be adjusted to bring about such a condition. And two, in view of the treatment of the revenue received from the sale of electricity to the York Railways Company, namely, as a credit for the cost of purchased energy, so that such revenue does not appear as revenue to respondent, property used exclusively for this service can be excluded from the reproduction cost estimate. I have chosen to exclude property from the estimate. In so doing one arrives at a rate base, or at least an estimate of the cost of the property which is used in the public service and attributable to the revenue as received from the general public.

By Mr. Keesey:

Q. Now, you have just read practically word for word the answer that you made in your former examination, have you not? A. Yes sir.

*H. Root Palmer—For Commission—Cross*

Q. And that means, does it not, that in your opinion this transformer and appurtenant equipment should be excluded from the rate base of the Edison Company because it is used at a loss, they don't obtain what you call a compensatory rate for the use of it? A. Yes sir.

Q. Do you think that is a general principle of rate making or establishing a rate base that all equipment not profitably used should be excluded from the rate base? A. For a particular customer?

Q. Yes, and the loss so borne? A. And the loss was borne by the remaining customers?

Q. Yes. A. Yes sir.

Q. How about a rural extension that is operated at a distinct loss, should that be not counted in the rate base? A. I have not made a study of rural extensions.

Q. Let me take the instance of one street and then on the outskirts of a city, where you can show that that particular extension is operated at a loss, should the extension be excluded, should the value of the extension be excluded from the rate base? A. It is not, no.

Q. It should not be? A. No.

Q. Then what is the difference between that and this equipment used for York Railways Company? A. This equipment is only used and useful for one specific customer and is not available for other customers, and the use of the service by this customer is gradually decreasing, so that the loss is increased year after year.

Q. Suppose that the Railways Company were—

The Commissioner: Mr. Keesey, are you trying to break down the witness' position, trying to make him reverse his position? He stated his position exactly and clearly. I see no useful purpose in arguing with him. If you take the position that he is wrong you can show he is wrong.

*H. Root Palmer—For Commission—Cross*

Mr. Keesey: I have not been limited before in establishing this as clearly as I could.

The Commissioner: He has made it as clear as it can possibly be. If it is wrong you can show it.

Mr. Keesey: I was just going to ask, if I could ask one more question, I want to ask if he would apply the principle to equipment used for one industry, whether it was a profitable or losing industry.

The Witness: This relative equipment is not useable for other similar customers by that same company.

Mr. Keesey: I would like to reserve the right of cross examination until later as to the details of allocation, the theories of allocation which our engineers are now developing, but there is just one question I would like to bring out at this time because it is pretty general.

By Mr. Keesey:

Q. Mr. Palmer, you have stated in your testimony on Page 126, I think it is, that your allocation of the electric generation is based on the segregation of the electric and steam generating property in operation on the basis that the operating expenses are confined to the turbine operation and auxiliary periods, and meaning there, I take it, with the Edison operations, the Steam Company building and the turbine room and the electric energy delivered to the switchboard. Now, if the Edison Company gets any benefit at all out of the use of this steam, without going now into the question of how much steam they use, should not they be entitled to part of the value of the plant and equipment used in producing that steam? In other words, why on your own theory do you allocate it 100 percent to steam, if Edison Company uses part of the steam generated?

A. Because the steam generating facilities are only adequate for the requirements of the Steam Heating Company, including proper reserves for the production of the service.

*H. Root Palmer—For Commission—Cross*

Q. But every year for some years Edison Company has gotten over three million kilowatt hours out of it, have they not? A. And even so the use of steam by the steam heat customers is increasing so that any steam available for electric generation is reduced as the steam heat customers increase their use.

Q. What makes you say that the steam heat customers are increasing? A. I assume that—

The Commissioner: You are objecting to the word assume.

Mr. Keesey: When he is wrong.

The Witness: It is a going concern.

Mr. Keesey: It is an assumption that the steam heat customers are increasing?

By the Commissioner:

Q. Is that based on the record of consumption of steam by the Steam Heat Company, that is, that the number of customers is increasing? A. Not particularly the customers, there has been a small variation in the amount of steam sold.

Q. Yes, of course— A. There has been fluctuation depending upon the winter weather.

Q. They ought to have had a big winter last year.

By Mr. Keesey:

Q. You don't know whether it is increasing or not, do you, Mr. Palmer? I don't either. Will you look, Mr. Palmer, at Exhibit No. 6, Sheet No. 26. That was not prepared by you, but put in evidence by Mr. McShea, and then say whether or not the sale of steam is increasing or not?

The Commissioner: According to that sheet, as I read it, certainly consumption is increasing.

Mr. Keesey: The consumption in 1934 fell off in 1935.

*H. Root Palmer—For Commission—Cross*

The Witness: From 1931.

Mr. Keesey: 1936 seems to be running pretty much the same. Might I withdraw that question, it does not seem important, unless you want the answer.

Mr. Miller: I would just as soon have the answer. Go ahead and answer it.

The Witness: Increase in 1000 pounds condensation, Mr. McShea shows 1931-1935 approximately 13 percent.

By Mr. Keesey:

Q. What does it show for 1934-1935? A. I took it from 1931 to 1935.

Q. Between 1934 and 1935? A. A gradual increase from 1931 to 1934—

Q. Will you please listen to my question and then answer it. What does it show compared with 1934 and 1935? A. A decrease of about six thousand pounds.

Q. Do you remember what kind of weather we had last year, whether it was severe or not? A. Rather severe.

Q. Mr. Palmer, in the answer from your testimony which I read you, you have treated the steam generated as being produced entirely—as being chargeable entirely to the steam heat plant until it reaches the turbine where it is converted to electric energy. Now, what I want to ask you is, should not the Edison Company, even on your theory, be entitled to the benefit of some part of the plant and equipment for generating heat or so long as it uses part of the steam so produced for its own purposes? A. In its rate base?

Q. Yes. A. No sir.

Q. Why not? A. Not if the steam generating equipment is of a capacity for the Steam Heating Company and that the generation of electricity would thereby be incidental and not reliable, if, as and when the steam was available for electric generation it should not be in the rate base of the Electric Company.

*H. Root Palmer—For Commission—Cross*

Q. What should be done then as long as the equipment is owned by the Edison Company and operated by the Edison Company, is it your opinion that they should pay the Steam Heat Company for the steam that they used in the generation of electricity? A. The Steam Heat Company could operate that boiler plant as its own property, the value allocated to it, and the generation of electricity is incidentally a by product, delivered to the Electric Company on the basis of the steam cost to the Electric Company as purchased power. That would mean that the kilowatt hours generated would be included at the average cost of purchase power, and from that amount would be deducted the cost of this electric generation and the difference would be credited to the Steam Heat Company and act as a reduction in its operating expenses. The treatment the other way would mean that for 1935 when there was no credit from the Metropolitan Edison Company under a new contract for standby charge, the total generation cost, operating cost of the steam plant, was \$139,498.98. The credit for steam delivered to the Steam Heat Company was \$98,576.23, leaving a net cost of generation of \$40,912.73, that for the 3,161,700 kilowatt hours generated that year would be at the rate of 13 mills and the average cost of purchased power was 8.17 mills. If you add to the net generating cost fixed charges at 10 percent on the allocated value of the generating plant which is shown in Exhibit 19 it would be \$50,722.40, making a total cost, including fixed charges of \$91,635.13 to the Edison Company for the generation of 3,141,400 kilowatt hours. If that same power had been purchased under their present power contract they could have purchased that for \$25,655.23, leaving a cost to the Electric Company for 1935 of \$65,969.90.

Q. Based on the cost of purchased power in 1936? A. 1935, 8.17 mills, the difference would be larger for 1936, the rate is lower. The excess cost to the Electric Company would be greater.



*H. Root Palmer—For Commission—Cross*

I want to know is why you allocated 75 percent of that land to the Edison Company and 25 percent to the Steam Heat Company, when it is all owned by Edison Company? A. By reference to Schedule 2 you will note the words, "ash pit" there. That property there, part of it near the Pershing Avenue end does show some ash handling equipment, it is necessary to have space for ash trucks to get into that in order to haul the ashes away. The turbine room entrance for the taking in and out of large machinery is away in the rear and requires that space to go from the street back in there to get the machinery into and out of the turbine room, and the allocation of 75 and 25 percent was my judgment.

Q. Now, in the area representing the old boiler room you allocated 75 percent of that to steam and 25 percent to Edison, what was the reason for that allocation? A. That space is utilized by steam pipe and some equipment and some material for repairs and work in the boiler room, and was utilized by the Electric Company at the time I was out for some transformers and electrical equipment, and my judgment of the relative space occupied was about 25 and 75 percent.

Q. Of course, if it was not occupied for steam purposes, the Edison Company would have it included, wouldn't they? A. Well, since that inspection a change has been made. Really it is almost 100 percent steam now, because a machine shop has been put in there, and the work in the machine shop is almost entirely for the requirements of repairs to the boiler plant, steam plant.

Q. If the machine shop is moved some place else that would become 100 percent Edison? A. That was based on the use at the time.

Q. That would vary from time to time according to the use made of it? A. It might, but I don't know. That was what it was at the time I made the inspection.

Q. If you went down there again and saw it used entirely

*H. Root Palmer—For Commission—Cross*

by Edison then you would allocate it all to Edison? A. There are some places there that I know very well, because there is steam piping and steam equipment which would have to be removed first.

Q. With reference to the area used for substation transformers and coal storage what would be the reason for allocating the 54 to steam and 46 percent to Edison? A. At the time of my inspection there was utilized by the electric facilities of York Haven a substation, 165 feet long on Gas Alley and an average of 25 feet wide; making the total square feet 4,125. Estimating that they used increased facilities for the Electric Company, the space allocated was increased by \$5,175 feet, making a total allocation to the electric property of 9,300 feet. The remainder was used by steel structures for handling coal into storage and out and for the storage of coal, and therefore, required in connection with the operation of the boiler plant, and the percentage was .93 of 20,140, the percentage as noted, 54 percent and 46 percent.

Q. 54 percent of what? A. 54 percent of—

Q. 20,140? A. Yes sir. And 46 percent of 20,140 for the electric.

Q. On Sheet 2, of Exhibit 18 you allocate to Steam Company, 100 percent on the reproduction cost of all structures used in housing or serving the boiler plant equipment, don't you? A. Sheet No. 2?

Q. Yes, headed "Summary of building allocation." A. The new boiler room is 100 percent steam. The old boiler room is allocated.

Q. That you just said was now used as a machine shop. I intended to limit my question. When I said 100 percent, I meant 100 percent of building structures housing or serving the needs used only in steam production, those needs you have allotted 100 percent to steam? A. Yes, on a proportionate use, where that allocation is used.

*H. Root Palmer—For Commission—Cross*

By Mr. Miller:

Q. Mr. Palmer, is York Railways Company the owner of the Electric Company? A. From the testimony I have heard it is. I cannot answer that of my own knowledge.

Mr. Keesey: We will agree that it is.

By Mr. Miller:

Q. Do you have the demand figure of the Electric Company? In other words, what is the total demand, average demand, maximum demand on the system? A. 16,500 kilowatts.

Q. In other words, about twice the generating capacity, the standby generating capacity of the steam plant? A. The steam generating plant, more than twice.

Q. More than twice. Then if the source of purchased power should cease to be available, and the standby was called upon, the standby capacity would not suffice to serve the consumers? A. No sir.

By Mr. Keesey:

Q. It would serve some of the consumers, wouldn't it? A. Oh, if that was required in the summertime when the steam heat system was not in operation the capacity available in the generating system would be somewhat less than it would be in the wintertime if the steam heat system was in operation.

Q. Why? A. That steam heat turbine is not developing as much capacity with the back pressure of the steam heat system on it. I would like to amplify, the York Railways equipment,—

Mr. Keesey: I am not interested in that.

The Commissioner: Do you object to his amplifying his answer to your question?

Mr. Keesey: It seems to be unnecessary.

The Commissioner: It is in answer to your question.

*H. Root Palmer—For Commission—Cross*

The Witness: That equipment is owned by the Edison Light and Power Company, installed and operated by them to transform and convert electricity sold to the York Railways Company after it has passed through the meter and become property of the York Railways Company.

By Mr. Keesey:

Q. Do you mean that York Railways is charged with the electricity after it is transformed? A. It is metered on the AC high voltage side of the rotaries.

Q. Is there anything lost? A. 2300 volts and that equipment takes that 2300 volts and converts it to 600 volts direct current incidentally for the operation of the trolley cars, and it is equivalent to installing equipment for a customer after the current has been delivered to the customer.

Q. There is a loss of current in that operation, isn't there? A. That is reported on the meter in the operation of the rotary.

Q. And the Railways Company pays for the lost current? A. Exactly.

Q. Do you know what percentage that is? A. I don't.

The Commissioner: Is there anything further.

Mr. Keesey: We have nothing.

Mr. Miller: Nothing.

The Commissioner: Do you have anything further to offer, Mr. English?

Mr. English: Not at the present time, except this information which I am sure we will be interested in. Mr. Downes informs me that this work will be completed by the 15th of January and then we will be ready to stay with you as long as you can tolerate us.

The Commissioner: You don't think that could be moved up? I see Mr. Downes shake his head.

*R. A. McShea, Jr.—For Complainant—Cross*

amounted to \$681,851. I should like to ask you whether there are included in the operating expenses, as disclosed by the books of the company and which, of course, would be deducted from the gross revenues in arriving at operating income, any expenses which, in your opinion could be saved by the respondent if it was completely divorced from its affiliates? A. You are asking me now whether the respondent could save or reduce the amount of operating expenses actually incurred in 1935?

Q. If it was completely divorced from any connection with either the Steam Heat Company or the Railway Company, in your opinion? A. Of course I am not an operating man, Mr. Miles, and I don't know that.

Q. Perhaps you misconstrue the purport of my question, but you are an accountant. A. That's a broad question, that covers reproduction and all those other things.

Q. You have made a study of the operating expenses? A. We have examined the books.

Q. And you have testified fully to it? A. I have prepared a great many statements of operating expenses as shown by the books—I have done that.

Q. My question is, whether in the course of the examination you found any expenses which the respondent might save if it had not any connection or affiliation with either the Steam Heat Company or the Traction Company, which has been referred to in the evidence. A. It all goes back to the apportionment of the cost of operation of the power plant on Pershing Avenue. Now, certainly I don't feel that I can answer that question, because it seems to me it is an engineering proposition.

Q. Now, you testified that the respondent owns the building occupied by itself and its affiliates, but that the expenses of operation and the costs of that building are borne by the Edison Company, except the cost of electricity, steam heat,

*R. A. McShea, Jr.—For Complainant—Cross*

and the expense incident to a telephone operator and janitor's services? A. That's right.

Q. I should like to inquire whether you have any opinion, based on your investigation of this company and its affiliates, as to whether or not the Edison Company would not actually require the use of that entire building that it now occupies if it was completely divorced from its affiliates? A. That may be true.

Q. Well, is it true? A. I don't know.

Q. You have been there? A. Oh, yes, I have been there.

Q. I don't want to ask you a leading question, but I will ask you whether you found any congestion to exist in that building? A. I haven't been throughout the entire building, Mr. Miles. I have been on the first and second floors. I made one visit to the fourth floor and right now I don't know whether that's the top floor or not.

Q. Assuming solely for the purposes of the question, then, that the respondent would require the use of that entire building if it was divorced from its affiliates, isn't it a fact that the operating expenses in connection with that building would be increased so far as the Edison Company is concerned? A. With that assumption, that's true; yes, sir.

Q. At Page 57 is certain of your testimony as to the cost to the Edison Company of producing or generating steam heat and the price at which it sells it to the York Steam Heat Company. I should like, first, to ask you whether your knowledge of the cost of manufacturing such steam heat by the respondent is based solely on the information disclosed to you in certain minutes of the board of directors of the company?

(Discussion off the record.)

By Mr. Miles:

Q. Is your knowledge of the cost of that steam heat to the respondent company based solely on extracts from the minute books of the respondent company? A. Not quite.



*R. A. McShea, Jr.—For Complainant—Cross*

Q. You have further knowledge? A. In attempting to check that forty cent figure mentioned in the minutes I ascertain quantity of steam per thousand pounds of condensation produced during, I believe, the year 1934, since the resolution mentioned the year 1934, and from the accounts I saw both the cost of producing the electricity and steam, as reflected in the accounts. Before making any allowance for depreciation, taxes or anything, and then taking the number of kilowatts produced by the plant and applying nine mills as an arbitrary figure and deducting the so-called estimated cost of the electricity from the total estimated expenses, I got a figure of the estimated cost of the steam produced and then dividing one thousand pounds into that amount, I came to some figure in excess of forty cents a thousand.

Q. And you feel, and I say this with the greatest respect to you, you feel that your past experience enables you to determine that amount and state it on the record? A. I was only attempting to determine what the books showed.

Q. Therefore, your final conclusion as to the cost was a determination formed from an examination of the books? A. That's right.

Mr. Miller: That isn't quite right, Mr. Miles.

Mr. Miles: He says it is right, Mr. Miller.

Mr. Miller: Go ahead.

By Mr. Miles:

Q. What in your opinion did it cost the respondent to manufacture the steam in the year 1935 per one thousand pounds? A. I first would like to say that that was the year 1934, because it was the date mentioned in the resolution.

Q. All right. What did it cost in the year 1934, in your opinion? A. I came to a figure of about forty cents. That is,

*R. A. McShea, Jr.—For Complainant—Cross*

however, before the matters of depreciation, taxes and return were taken into the calculation.

Q. In other words, the forty cent figure includes only items of cost relating to operation and maintenance? A. That's right.

Q. Well, now, to what or in connection with what units of property would you calculate in fixed charges to add to that forty cent cost? A. Well, the production system of the property.

Q. Assuming that the respondent, Mr. McShea, discontinued the business of generating and selling steam, could it save any of the fixed charges which you suggest should be added to that forty cent cost? A. You mean as far as the rate payer is concerned?

Q. Yes; as far as the rate payer is concerned. A. That would all depend on what the Commission did with respect to allowing the full plant as used and useful property.

The Commissioner: Mr. Miles, just to get my mind clear, the questions you have asked would indicate at least the possibility that the cost of forty cents was not the whole cost. I mean there is a possibility of that.

Mr. Miles: What I intended to do, if the Commissioner please, is that this witness has stated definitely that it is not the whole cost and we think it is the whole cost, and I am trying to develop—

The Commissioner: If these other charges were not reflected in the forty cents, then it would not be the whole cost?

Mr. Miles: If they properly belonged in there.

The Commissioner: If they properly belonged in there?

Mr. Miles: Yes; but under our conception of the case they don't belong in there. We propose, if your Honor pleases, in our particular case to present data as to the cost of generating the steam.

*R. A. McShea, Jr.—For Complainant—Cross*

By Mr. Miles:

Q. Assuming, solely for the purpose of my question, that forty cents does represent the aggregate cost to the respondent of generating one thousand pounds of steam, do you regard forty-two and a half cents per thousand pounds as a compensatory rate for the respondent to sell it to the York Steam Heat Company? A. No; I don't. Two and a half cents seems to be a very small margin to me.

Q. I am asking you to assume for the purposes of my question that forty cents represents the entire cost. A. Oh, the entire cost including return and depreciation?

Q. The entire cost as you conceive it to be. A. I would like to find out what you conceive it to be.

Q. At the moment, if you don't mind, I am asking you. A. I would like to know the premise on which you are basing your question.

Q. My premise, to be quite candid with you, you have made a flat statement that the respondent is not selling steam at a compensatory rate to one of its affiliates. So far as I can analyze your testimony, and I have done so to the best of my limited ability, you have based your assertion upon the proposition that forty cents does not include any certain fixed charges, which should be included? A. That's right.

Q. Now I am asking you to assume that forty cents includes every increment of cost that is proper, do you regard forty-two and a half cents a compensatory rate?

The Commissioner: Mr. Miles, I don't quite follow your line of reasoning. This witness stated, specifically, that the forty cent figure does not include any charge for the return on the investment and taxes and, therefore, he says that the forty-two and a half cents is compensatory.

Mr. Miles: That is right.

*R. A. McShea, Jr.—For Complainant—Cross*

The Commissioner: And now you are asking him to assume certain facts which are totally at variance with the facts as he sees them and to which he testified on direct examination.

Mr. Miles: Your Honor, if I may say so, there does not seem to be anything abnormal in asking experts hypothetical questions. We propose, your Honor, to offer testimony that will show, we think, that there are no fixed charges properly applicable against the cost of generating steam.

The Commissioner: That were not included in the calculation of forty cents?

Mr. Miles: That's right. I am trying to find out from this witness whether two and a half cents represents a compensatory rate.

The Witness: I couldn't say that.

By Mr. Miles:

Q. That answer might satisfy the Commission but it doesn't satisfy me, because you have testified that that was a compensatory rate. Do you mean to tell the Commission that if forty cents includes every increment of cost that can properly be included in the cost of generating steam that forty-two and a half cents is a compensatory rate? A. Yes; it is.

Q. It is? A. It is.

Q. Referring to Commission Exhibit No. 11, which is a summary of utilization expenses as shown in respondent's books, have you since your testimony on October 28th analyzed that summary; and, if so, are you prepared to make any comments with respect to it? I ask that only because the record as of that date contains the assertion by you that you had not had an opportunity then to analyze it and I merely wanted the benefit of any criticism that you had to make if you had analyzed it since. A. I think I testified at the last hearing,

*R. A. McShea, Jr.—For Complainant—Cross*

R. A. McSHEA, Jr., having been duly sworn was examined and testified as follows:

*Cross Examination*

By Mr. Miles: *P*

Q. Mr. McShea, on Page 21 of the record, in response to certain questions propounded by Mr. Miller, you testified as to the excess of net revenue over and above the sum equal to six per cent of the appraisal of Day & Zimmermann offered in the merger case in 1935. A. I believe that is correct, but I would like to see the testimony.

Q. Now, I should like to know why you used a return of six per cent in making that calculation? A. By reason of the Commission's resolution passed on April 2, 1934.

Q. And it is your understanding that pursuant to that resolution this Commission is empowered to make a uniform and standard rate of return with respect to all electrical utilities operating in the State of Pennsylvania regardless of the conditions under which those companies operate? A. I take it that is the last word of the Commission in fixing the rate of return for utilities and that's the reason I used it.

Q. Do you understand that that rule applies to all electrical utilities regardless of the operating conditions? A. Yes; I do.

Q. Why did you apply the return, which you so used, to the reproduction cost as found by Day & Zimmermann in 1934, for the purpose of determining what you regarded as excess earnings? A. Because in determining the fair value of a property, the reproduction cost is an important factor.

Q. Do you understand that that is the only factor in fixing fair value? A. I do not.

Q. Well, then, why did you apply the six percent return to the reproduction cost? A. Because it has been our experience in the Commission, at least since I have been with the Commission, that the reproduction cost usually is just about the maximum figure.

*R. A. McShea, Jr.—For Complainant—Cross*

Q. If reproduction cost, Mr. McShea, in your opinion is not synonymous with fair value, would six per cent applied to reproduction cost indicate a basis by which you could measure what you term excess earnings? A. That is the guide as to what the excess earnings might be.

Q. Now, Mr. McShea, at Page 21 of the record is set forth certain of your testimony with respect to the amount by which the net operating income of the company in 1935 exceeded six per cent on the book value of the respondent's property, less the reserve for renewals and replacements. Do I understand from that testimony that you regard book value in this case as a measure or a standard by which fair value can properly be determined? A. I consider that to be the case, also.

Q. In this case? A. In any case.

Q. On Page 22, Mr. McShea, you said, in substance, that the revenues and expenses of the respondent referred to in your testimony were taken from the annual reports of the company without adjustments of any kind, but that you do not necessarily consider that they represent the proper revenues and expenses of the concern. I should like to inquire whether you have made any subsequent adjustment to those figures to get what you consider the proper revenues and expenses. A. At the time that that testimony was given our men hadn't finished the analysis of the accounts at York, and since I have given my testimony, as far as the operating expenses are concerned, I have made no statement in exhibit form as to what I consider the allowable operating expenses of the concern or the proper revenues.

Q. So since December 9th, you have not prepared any statement or summary reflecting what you regard as the proper revenues and expenses available for return? A. I have not.

Q. On Page 23 is contained certain of your testimony to the effect that the 1935 operating income of the respondent



*Colloquy*

Mr. Downes: I don't see how, sir. We will try.

The Commissioner: Then I take it that after the middle of January you will be ready to present your direct evidence.

Mr. English: Yes sir, and go through with it.

The Commissioner: It would be impossible to have a further hearing in January, because of the interruption of the Christmas holidays, and I will set the hearing down for the three days, the 20th, 21st and 22nd, if you think it will take that long to present your testimony in chief.

Mr. LaBrum: We will also have some further cross examination at that time.

The Commissioner: Suppose we put it down for those three days, in the hope that we can take the three full days, the 20th, 21st and 22nd.

Mr. Miller: Perhaps the gentlemen would like to examine Mr. Bierman at this time.

Mr. LaBrum: We are not prepared to examine Mr. Bierman at this time.

The Commissioner: I think we can get squared away on the 20th, and then we will really be moving along.

Mr. English: I would just like to ask you one question in this matter: Is it the position, I asked you at the other hearing, I asked you after the other hearing as to what rate base roughly you were contending for and you answered that question, is it the position of the Company that it has not been earning more than 6 percent return on the particular rate base, I mean on your interpretation of the particular rate base?

Mr. English: Yes sir.

The Commissioner: And that they didn't in 1935 or 1936?

*Colloquy*

Mr. English: I said no too rapidly. Mr. Keesey just corrected me. I wish you hadn't asked, but I understand in 1935 we did make a few nickels in addition to 6 percent.

Hearing continued.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Service Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER  
Official Reporter

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Hearing held at the offices of The Public Service Commission, Harrisburg, Pa., on Wednesday, January 27, 1937, at 9:30 o'clock a. m., Eastern Standard Time.

Present: Commissioner STAHLNECKER, presiding.

S. G. MILLER, Esq. (Harrisburg, Pa.) for the complainant;

MESSRS. V. K. KEESEY (York, Pa.) and

CLARENCE W. MILES (1845 Baltimore Trust Building, Baltimore, Md.) for the respondent.

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EVIDENCE ON BEHALF OF THE COMPLAINANT

Mr. Miller: Mr. Commissioner, with the consent of Mr. Keesey and Mr. Miles I am handing to the reporter a list of corrections to the testimony which the reporter will copy into the record at this point.

*Colloquy*

The said list reads as follows:

Page 169—First answer—The date “May 4, 1896” should read: “May 4, 1886”.

Page 175—First answer—fifth sentence—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 175—Third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 176—First paragraph—First sentence—The date “May 4, 1896” should read: “May 4, 1886”.

Page 177—First question—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 177—Second answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 177—Third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 181—First answer, second paragraph—The amount “\$3,277.33” should read: “\$3,227.33”.

Page 182—Third question—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 182—Fourth answer—The word “day” should be “date”.

Page 194—Fourth answer—fourth sentence—The words “Red Lion” should read: “road or line”.

Page 195—First answer—second sentence—The words “Red Lion” should read: “road or line” and the amount of “\$7,000” should be “\$11,000.”

Page 195—First answer—third sentence—The phrase “I used the \$11,650 for the entire bond issue in 1906 at

*CN Voquy*

\$60,000" should be changed to "I used the \$11,650, and the entire bond issue in 1906 of \$60,000".

Page 197—Last answer—fifth sentence—The date "June 1, 1931" should be "June 1, 1913".

Page 208—Third answer—The date "January 1, 1901" should be "December 31, 1901".

Page 273—"Steam heat plant kite" should read: "Steam heat plant light".

Page 378—The last line should read: "Commissioner" and not "English".

Page 351—Line 10—of answer—insert the word "name" after the word "The" to read—"to carry the 'same' load". Line 11—Omit the word "Rooney". Line 18—Substitute the word "to" for the word "through". Line 19—Substitute the word "system" for the word "turbine".

Page 358—Line 4—of third answer, omit the word "that". Substitute the word "the" for the word "they". Substitute the word "use" for the word "used". Insert the word "of" after the word use to make it read "Estimating the use of increased facilities". Last line of third answer. Substitute "9300" for ".93".

Page 366—Line 9—Substitute the word "rotary" for the word "relative". Line 9—Substitute the word "suitable" for the word "usable". Line 21—Substitute the word "equipment" for the word "periods".

Page 367—Line 10—Substitute the word "protection" for the word "production".

Page 371—Line 19—Substitute the word "loss" for the word "cost".

Page 377—Line 2—Substitute the word "suitable" for the word "incidentally". Line 8—Substitute the word "recorded" for the word "reported".

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*R. A. McShea, Jr.—For Complainant—Cross*

when I finished my examination, that I had no further comments with respect to that exhibit. That is my recollection.

Q. Since October 28th have you made a detailed analysis of the general administrative and other general expenses of the respondent, as set forth in Commission Exhibit No. 14? A. I think we have completed some analytical work that was under preparation at that time—yes.

Q. Based either on your knowledge as of October 28th or any further analysis that you have made since that date, have you any opinion as to whether any part of the expenses under that item, now charged against the Railways Company or the Steam Heat Company, would have to be incurred by the respondent if the operations were completely divorced? A. What was the question?

Q. Perhaps I can simplify it a little. A. I wish you would.

Q. At the present time part of the administrative expenses are allocated between those three companies? A. That's right.

Q. Now, the purpose of my question is to get your opinion as to whether if these companies were actually divorced, the respondent would necessarily have to assume that part of the operating expenses which is now charged against either or both of its affiliates. A. That's a hard question to answer, Mr. Miles. In order to make a complete answer to the question, it seems to me it would be necessary to actually spend some time in the office down there and make time studies or other studies, as would be necessary, to determine the extent to which the expenses—as to what the expenses would be under independent operation.

Q. Is it perfectly fair for me to say that you have not made an investigation that puts you in a position to express an opinion on that subject? A. That's right.

Q. Mr. McShea— A. Excuse me. You are speaking of the Sheet No. 1 of Exhibit 14?

Q. Yes; that's right. A. That's correct.



*R. A. McShea, Jr.—For Complainant—Cross*

Q. Mr. McShea, referring now to Commission Exhibit 16, relating to what you describe as Non-Operating Expenses Other Than Taxes, do I understand it to be your opinion that revenue derived from the sale of merchandise should be included in the income of the respondent available for return on its property? A. It is. That is what I consider it to be.

Q. Can you state whether it has been the practice of this Commission in the past to so treat such income? A. As a matter of accounting, bookkeeping as prescribed by the Uniform System of Accounts, all companies have been required to classify as non-operating revenues and non-operating expenses all merchandising allowances and all merchandising costs.

Q. Well, that's what I was interested in, in referring to the Commission's prescribed system of accounts. You don't suggest, therefore, that this respondent is violating the rules of accounting of the Commission, do you? A. Oh, absolutely not. I was talking only from a rate standpoint.

Q. Is it your understanding that that system of accounting does not apply to accounting for rate making purposes? A. I consider merchandising operations to be promotional in character as far as the sale of electricity is concerned and, as a matter of fact, the new classification of accounts for electric companies, which became effective on January 1, 1937, and which is the classification prescribed by the Federal Power Commission, reclassifies those items and shows them under the operating expenses as sales promotion or some such designation as that.

By the Commissioner:

Q. Mr. McShea, I don't think that still answers Mr. Miles' question, as to whether you consider these particular items included in the picture as an allowable return and allowable expenses and are proper to determine a rate base. He asked you for your opinion as to whether the Commission did or did

*R. A. McShea, Jr.—For Complainant—Cross*

not do that. A. Well, we have had some few rate cases, electric rate cases that have gone through to a conclusion; I think the last one was some years ago, that was finally adjudicated, and the question has not been answered in any Commission ruling, but I can say this—

Q. In setting up your classification for this company did you include this in your picture or was it put in here as a criticism or as approval of the Edison Light & Power Company's set-up? What is it in here for? We are in this case to determine a proper, allowable return for this company. Now, is it because it has a direct bearing on that? A. In my opinion it should be included in the picture, and whatever net income or net loss there be in the merchandising operations should be added or deducted from the income.

By Mr. Miles:

Q. I do not wish to pursue this subject unnecessarily, but I should like to repeat one question, which you have not answered: Do you understand the Commission's present system of accounting is applicable to accounting in rate making cases?

A. You mean wholly, entirely?

Q. Yes, sir; I mean that you take seriously the accounting practices of the Commission and you understand they are applicable to all accounting whether it is for rate making purposes or not. Now, I am trying to find out whether that is true in your opinion? A. No; I don't think so.

By the Commissioner:

Q. Mr. McShea, the essential purpose of the requirement of accounting for electric companies is to control the rates, essentially, the amount of return to be allowed to that company, is it not, by determining the full picture of that company? A. That's true.

Q. That is the underlying purpose, is it not? A. The purpose of the—

*R. A. McShea, Jr.—For Complainant—Cross*

Q. You don't set up a system of accounting just to make a company carry a great many accounts, in the justification of their income, but you do it for a purpose and the purpose is to regulate the company; isn't that the essential purpose in requiring such accounting? A. The purpose of prescribing the system of accounts, one of the main purposes, was to obtain uniformity in the accounting for all of the companies.

Q. To make it easier to control the rates and return of the companies, of course? Isn't that the essential purpose?

A. There are many purposes.

Q. I say, the essential purpose obviously in requiring any routine or method or practice to be followed by the utility is for the purpose of facilitating a proper control of the rates and service of that company, is it not? A. Probably; yes, sir.

The Commissioner: I will say for the record that it is. There are many other reasons, of course.

The Witness: Now, Mr. Miles, as I understand it, wanted to know what was recorded on the books in the classification of accounts which related directly to the matter of rates.

(Discussion off the record.)

By Mr. Miles:

Q. Mr. McShea, referring to the Commission Exhibit No. 22 relating to what has been termed in this case as donated capital rate consumer contributions—

Mr. Miller: Now, I believe the cross-examination was completed on that, Mr. Miles. There was a considerable cross-examination on that item and I believe the purpose—

Mr. Miles: None of the questions which I propose to ask have been asked, Mr. Miller.

The Commissioner: Do you object, Mr. Miller?

*R. A. McShea, Jr.—For Complainant—Cross*

Mr. Miller: Well, I will hear Mr. Miles' question first.

By Mr. Miles:

Q. Referring to the Commission Exhibit No. 22 relating to donated capital-rate consumer contributions, have you any knowledge as to whether or not the property or lines referred to on pages 2 to 10 of that exhibit are still in existence or whether those lines have since been replaced with new construction? I refer to the property—I mean in part or all of the property? A. Some of those lines have been replaced.

Q. Well, now to the extent that any lines have been replaced, do you think that the original lines built with the customers' funds should be deducted from the rate base? A. Yes.

Q. In other words, a line built by the company with John Doe's money and since replaced in its entirety with property built by the company with its money, you still feel that there should be deducted from the rate base a sum equivalent to the original investment by the consumer? Now, can you state approximately if you have the information, how many of the lines referred on Sheets 2 to 10 of Exhibit 22 as having been financed by customers have since been rebuilt by the company with its own money? A. I don't think I can give that to you now, but I can work it up for you.

Q. Now, Mr. McShea, would you mind explaining your theory upon which you think that even though a line has been replaced by property built by this company with its own funds that there should be deducted from the rate base a sum equivalent to the original contribution of the consumer? I mean, frankly, it is so difficult for me to follow it and I should like to have you, if you will, clarify it. A. Well, from the time the company first gave service over its lines it had accumulated a depreciation reserve by charges to expense year after

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year and, in effect, the customers have paid for the replacement of those lines through the depreciation charges.

Q. And under your theory would it not necessarily follow that all of the replacements of property taken care of through the reserve should be deducted from the rate base? A. No.

Q. How can you distinguish between this property which has been taken care of through the reserve and other properties?

The Commissioner: You are asking him to distinguish or attempt to distinguish between that property which was paid for originally by the company and that property which was paid for originally by somebody else? Are you still addressing yourself to the consumer proposition?

Mr. Miles: Yes, sir.

A. In that one case the customer has actually built the line and pays an amount sufficiently each year to replace the line.

By Mr. Miles:

Q. To replace the line, you say? A. Yes; whenever it is necessary through the depreciation charges.

By the Commissioner:

Q. You mean, Mr. McShea, that the customer pays in rates an amount sufficient to rebuild the line or an amount to properly capitalize it, or what do you mean by that? Surely you don't mean he pays enough in rates to pay for the actual capital involved in the rebuilding of that line, do you? A. What I mean, in the experience of this company there has been a large charge to the depreciation expense that has been paid for by the customers as a whole.

Q. I understand; but supposing a customer pays \$1,000 for his line—whatever the figure may happen to be; we will call

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it \$1,000, and then the company some years later replaces that line, it has a capital outlay of the amount that it puts in the new equipment, does it not? A. It has an outlay; yes, sir.

Q. Now, are you saying that that customer has contributed an amount equal to the amount of relaying that line or an amount equal to the proper capitalization of the cost? A. I say he has contributed the first cost but not the replacement cost.

By Mr. Miles:

Q. In other words, he has had nothing to do with bearing any part of the expense of the replacement cost any more than any other rate payer of the company, has he? A. That's right.

Q. Have you any knowledge as to how many lines referred to on Commission Exhibit 22 were built part with funds contributed by the customer and part with funds contributed by the company? A. I do not.

Q. And I take it that you have no information as to how many of those lines were built and paid for by the customers themselves and how many were built by the company with funds supplied by the customer, have you? A. I do not.

Q. And I take it that you have no information as to how many lines are now used and useful in the rendition of electric service, have you?

The Commissioner: That is the line—

Mr. Miles: Included on his Exhibit No. 22. My question relates solely to Exhibit No. 22.

The Witness: No; I have no way of knowing that.

By Mr. Miles:

Q. Now, have you any information as to who stands the expense of maintaining the lines referred to on Exhibit 22?

A. As far as I know the company maintains the lines.

Q. Well, as a matter of fact, you do know that they do



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maintain the lines? A. Well, unless it's an exceptional case, they do; yes, sir—that's right.

Q. And now do I understand that it is your opinion that any of that property of the respondent which may be used and useful in the public service but built or constructed with funds advanced by the consumers should be deducted from the rate base?

The Commissioner: You mean that funds advanced should not be repaid to the consumer? You mean funds actually contributed by the consumers whether they gave them to the company direct or built the line themselves?

Mr. Miles: That's right.

The Witness: That's right.

By Mr. Miles:

Q. Would your answer to that last question be affected in any way by the fact that the company owns the property in question and maintains it at its expense? A. It would not.

Q. Would your answer be the same if any part of the line shown on Exhibit 22, the distribution lines, were built in part with funds advanced by the consumer and in part with funds of the company?

Mr. Miller: Mr. Commissioner, I think we are getting into a long line of cross-examination on this point, which the respondent stated was covered at the last hearing, and I think I must object to any further cross-examination on the subject of donated capital. The respondents stated at that time that they had completed their cross-examination so far as they had gone on the exhibits that had been covered at the last hearing.

The Commissioner: Mr. Miller, that puts me in a difficult position because I do not see how, having

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allowed Mr. Miles to cross-examine on this subject to this degree why he should not be allowed to finish his cross-examination.

The objection was not pressed as to his cross-examination in part on this exhibit, and I will have to overrule the objection and direct the witness to answer the question, but with this understanding: I hate to be put in the position of breaking in on your cross-examination, Mr. Miles, but I think the question, perhaps, needs slight clarification. The last question you asked is with respect to a line partly built with company money and partly built with consumer money, but in that connection I understand you to mean that the amount listed on this exhibit—if there are any amounts affecting any cases such as you now describe—the amounts listed on this exhibit are amounts contributed solely by the consumer for the whole cost of the line.

In other words, what I am getting at, here is an item of \$1,300. Now if the cost of that line was \$1,300 in that particular case, Mr. McShea assumes in that particular case that Mr. Spangler contributes \$1,300. Are you attempting to indicate by your line of questioning that these amounts may have been contributed in part by the company or paid in part by the company?

Mr. Miles: Yes and no; and now may I clarify that?

The Commissioner: Yes.

Mr. Miles: What I am trying to ask the witness—I am not concerned with the dollar figure shown on the exhibit, is whether in fact any of the lines shown on that exhibit were built in part by company money and built in part by customers' money—whether they should be excluded from the rate base.

The Commissioner: As to the whole part or the part paid by the consumer?

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Mr. Miles: That's what I want to try and find out.

The Commissioner: Perhaps I don't correctly understand you, but I understand you are asking him whether the whole cost of that line was paid by the consumer or whether a part of it was paid by the consumer and part of it by the company?

(Discussion off the record.)

The Witness: As to the part of the line that was paid for by the company I think that should be allowed. As to the part paid for by the customer I think it should not be allowed.

By Mr. Miles:

Q. Mr. McShea, I refer now to Commission Exhibit No. 23—

Mr. Miller: Now, Mr. Commissioner, Exhibit 23 relates to the estimated original cost of the property and, as you will recall, that was gone into by Mr. Miles in the cross-examination of Mr. McShea at great length and in some detail and I see not reason for further cross-examination on that exhibit and, therefore, I object to such cross-examination.

Mr. Miles: Your Honor, there are two observations I should like to make with respect to Mr. Miller's objection: One is, it must be perfectly apparent to your Honor that in all fairness, where principal counsel in this case has withdrawn and other counsel has substituted, whose duty it is to follow through these proceedings, it would be rather extraordinary—it seems to me at least—to deny them an opportunity to reasonable cross-examine the witnesses, especially where so far it is humanly possible, we propose to avoid any questions asked by counsel at the last hearing; and I propose to confine my cross-examination to definite and relative facts.

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(Objection overruled.)

By Mr. Miles:

Q. I should like to ask you whether it is not a fact, that your estimate of the original cost of a substantial part of the property described in that exhibit was based upon information obtained from capital stock tax returns of the predecessor companies of the respondent and the books of such predecessor companies containing entries made prior to the year 1913?

A. That's true, Mr. Miles—a substantial part, you say?

Q. Yes; a substantial part. A. It's about one-third or one-fourth, I should say.

Q. Can you state whether the property or any substantial part of it referred to on the capital stock tax returns of the predecessor companies mentioned in your testimony is now in existence and used and useful by the respondent in the rendition of its present service? A. I cannot.

Q. Well, you mean to tell the Commission that you don't even know if any property included in those capital stock tax returns is still in existence? A. I certainly don't know whether the \$18,000 shown in there for the Peoples Company in 1886 is still in existence.

Q. Well, isn't that same observation true with respect to a great deal of the property referred in those capital stock tax returns? A. That's right.

Q. As a matter of fact it is a fact, is it not, Mr. McShea, that very little of the property referred in the capital stock tax returns of the predecessor companies is any longer in existence? A. Oh, I simply don't know. Some of it may be there. The real estate may be there.

Q. So it is pure conjecture on your part as to whether it is there or not, isn't that a fact? A. Well, my guess would be that a large part of it is not there.

Q. Now if it is a fact that a large part of the respondent

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company's property referred to in those capital stock tax returns is no longer in existence, will you state what assistance that exhibit can be in determining the original cost of the respondent's present property devoted to the public use? A. Because under ordinary accounting requirements, whether it is a system of accounting prescribed by a regulatory Commission or their own systems that they had prior to this uniform system, a company accounts for retirements of its property.

Q. Was it your purpose in Exhibit 23 to arrive at the original cost of the property now devoted by the respondent to the public service or to some other property? A. It was my purpose to determine the estimated original cost of the property that is recorded on the books.

Q. Regardless of whether the property is now devoted to the public service or not? A. That's right.

The Commissioner: If it is not, why is it on the books?

Mr. Miles: I do not know, your Honor.

By Mr. Miles:

Q. You don't suggest, by your last answer that the property described on the capital stock tax returns of the predecessor companies of the respondent constitutes the property now recorded on the books of the respondent, do you? A. Oh, no; I didn't say that.

Q. Then if you have no knowledge as to whether the property disclosed on the capital stock tax returns of the predecessor companies of the respondent is now used by the Edison Company will you state what assistance that exhibit has in finding the original cost of the present property of the respondent? A. This exhibit relates entirely to the book value as of June 30, 1936 as adjusted by what things we found in the capital stock tax reports or your records.

Q. What I am trying to inquire into, Mr. McShea, is what

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assistance is it in determining the original cost of the present property of the respondent? A. Of course I assume that if the company retired property from one year to the next that that retirement was properly taken care of on the books of the company. Now, theoretically if the books had been properly kept, and I am not saying they were not properly kept, they then would reflect the original cost of the property of the respondent.

By the Commissioner:

Q. Of the present property of the respondent? A. Yes.

By Mr. Miles:

Q. Even though according to your previous answer it is your opinion that a substantial part of the property referred to on that exhibit is not part of the present property of the respondent? A. That's right; because some of the property, after it was installed in the early days, has since been retired and credited out of the plant accounts.

Q. When did the prescribed system of accounting for electric utilities become effective in Pennsylvania? A. January 1, 1919.

Q. Isn't it a fact that the greater part of these capital stock tax returns that you have used for the purpose of estimating the original cost of the respondent's property were returns filed prior to that time? A. They were all filed prior to that time.

Q. Have you any knowledge of what accounting practices were followed by those companies? A. In the case of the two largest companies—the Edison Electric Light Company and the Merchants Electric Light, Heat & Power Company—they had double entry systems of bookkeeping.

Q. But it is a perfectly obvious fact, is it not, Mr. McShea, that prior to that time they could have kept their books in any way they wanted to? A. That's true.



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Q. And you have no knowledge whether the accounting system which was followed was a sound accounting system or not, have you? A. Well, from our examination of the accounts of those two companies they looked fairly good.

Q. Would you say they were kept rather comparably to the accounting system now required by the Commission? A. Well, now, I didn't compare them in detail.

Q. I want to get the benefit of your opinion. You say they "looked fairly good." "Fairly" is a relative term. Now what do you mean by that? A. Well, I had all the necessary books of account and general ledgers and journals and cash books and vouchers in the case of the Edison Electric Light Company.

Q. What reason have you for believing that they recorded every piece of property on their books at the original cost?

Mr. Miller: Now, Mr. Commissioner, we were through this thing from the ground up at the last hearing. The record contains a detailed statement as to just how Mr. McShea arrives at each figure of those costs, and I don't think we ought to drag this proceeding by a repetition of the testimony of Mr. McShea.

Mr. Miles: Your Honor, I cannot possibly concur in Mr. Miller's observation that the record is complete as to how these items were obtained. On the contrary it is our frank opinion that the record is quite incomplete as to the basis of the expert's statement that they do represent the original cost of the property.

The Commissioner: Mr. Miller, I have been anxious to proceed as expeditiously as possible, but as a matter of fact if Mr. Miles is proceeding in numerical order on these exhibits, he has come pretty near to the end of the road. What I am after is to get the full and most detailed facts.

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(Objection overruled.)

Mr. Miles: What was the question, Mr. Stenographer?

(Question read as follows: "What reason have you for believing that they recorded every piece of property on their books at the original cost?")

The Witness: From our examination, they based the charges to the plant accounts upon the amount of cash paid for the various kinds of property.

By Mr. Miles:

Q. Did you find any entries on their books which justify exactly what you just said, Mr. McShea? A. Except the write-up entries and the write-down entries.

Q. Did you find any entries on those books that stated that the particular entry reflected the original cost of the property? A. They never earmarked an entry as being original cost. No company ever does that.

Q. Then how do you know with respect to the companies whose books were kept prior to 1919 when no accounting system was prescribed that those companies recorded their property at original cost? A. By reason of the cash vouchers and the vouchers supporting the charges to the plant accounts.

Q. Do you have among your work sheets any cash vouchers or work papers that will show that any of these companies prior to 1919 recorded their property on their books at original cost? A. The vouchers don't state that. I have never seen a voucher yet in any company where it said it was the original cost of the property.

Q. Then I am asking you again: Is it or is it not a conjecture on your part that the property was recorded at the original cost? A. It is not.

Q. Then I am asking you to indicate some evidence in your

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possession that the property was recorded at original cost.

Q. I have told you the reason: The supporting vouchers.

Q. The supporting vouchers? A. Yes.

Q. In what way do the vouchers indicate that the property was recorded at original cost? A. The amount paid for poles, equipment, and fixtures of various kinds.

Q. Did you find any instances where one of the predecessor companies of the respondent purchased its property from another predecessor company? A. Yes.

Q. And when you found such an instance on what basis was that property of the purchased company recorded on its books? Was it at the price it paid the company from which it purchased the property? A. I believe that's correct.

Q. Does that represent your definition of "original cost" or "historical cost"? A. That does not represent my definition of "original cost" or "historical cost", but in this case the amount involved differed so little with the amount I had arrived at as an estimated original cost that in some cases I chose to select the purchase price as being fairly representative of the true amount.

Q. To that extent it was conjecture, was it not? A. To that extent I exercised my judgment.

Q. You have previously stated however that there were many instances where the bases of your estimate of original cost depended on capital stock tax returns. A. That's right.

Q. Among the companies upon which you relied in that connection were the Westinghouse Electric Light & Power Company and the Red Lion Electric Light & Power Company? A. That's right.

Q. I hand you herewith photostatic copies of two capital stock tax reports, one filed by the Edison Company in 1894 and the other filed by the Red Lion Electric Light & Power Company in 1896, the same being copies of two of the capital stock tax returns referred to in your testimony. Will you

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examine those photostatic copies and tell me if you find any statement contained thereon where the taxpayer refers to or attempts to declare the original cost of his property?

Mr. Miller: 'Mr. Commissioner, I object to that as irrelevant and immaterial in the light of Mr. McShea's detailed testimony as to the methods which he used in regard to the stock tax reports in his computations.

(Objection sustained. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miles:

Q. So that means the capital stock tax returns of the two companies, photostatic copies of which I just handed to you, have nothing thereon that relates to the original cost of the property?

Mr. Miller: I object to that, Mr. Commissioner, as irrelevant and immaterial.

The Commissioner. I will overrule the objection because I think it would be pertinent for the witness at this time to answer that question.

The Witness: The capital stock tax returns do not state, in so many words, that the original cost of the property of either of the companies is so much.

By Mr. Miles:

Q. Do they state that in any other way? A. I explained how I used those capital stock tax reports.

Q. I am asking you, do the returns themselves contain any statement to that effect? A. I don't see the words "original cost" here in the return if that is what you are getting at.

By the Commissioner:

Q. You did however at the last hearing, Mr. McShea, go into a considerable detail of how you arrived at the original

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cost part of the figures which were on the capital stock tax reports, is that correct? A. That's correct.

By Mr. Miles:

Q. As a matter of fact, Mr. McShea, do not your estimates of the original cost of plant property as specified, for instance, to the Merchants Electric Light & Power Company and the Edison Electric Company—the two that you mentioned a minute ago—refer merely to an abstract of the net debits or credits as shown by certain ledger accounts of the two companies? A. Yes, that's right.

Q. And that is the basis of your determination of the original cost of those two companies, is it not? A. That's right.

Q. And you have not even considered, in making that abstract, as to whether the property is still in existence or used by the respondent, have you? A. Well, the books for both of those companies do not show retirements of property throughout the years.

Q. But in making that abstract you were not concerned with whether the property is still in existence or used by the respondent, were you? A. Well, I assumed that if the retirement was not made of a piece of property, it was still on the books and still in use.

Q. Yes; but I am talking about original cost. For the purpose of reaching your conclusions as to original cost you did not concern yourself as to whether the property was still owned and used by the respondent in the public service? A. Certainly I was concerned with it.

Q. And that was one of the factors that you considered in arriving at your estimate of original cost? A. Oh, no. In order for me to determine whether all of that property was still used and useful, I would have to inventory the property.

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Q. And you would also have to identify the property to see if it was still in existence, would you not? A. That's right.

By the Commissioner:

Q. If the books of the present company are properly kept, Mr. McShea, will they reflect anything in 1935 that is not used and useful? A. They might.

By Mr. Miles:

Q. The books would reflect all of the property that the company owned, would they not? A. That's right.

Q. Whether it is used or useful? A. That's right.

By the Commissioner:

Q. Would they indicate the amount set up for retirements? A. You mean, depreciation reserve?

Q. Yes. A. Yes; of all the property.

By Mr. Miles:

Q. And it would also show the basis of the retirements, would it not? A. The books?

Q. Yes. A. Yes.

Q. Mr. McShea, at page 169 of the record is certain of your testimony relative to the Peoples Electric Light Company, one of the predecessors of the respondent, wherein you state that in a certain application for letters patent filed by it with the Secretary of the Commonwealth the company stated the value of its property at that time as \$18,000. A. That's right.

Q. Did you find anything that would justify a conclusion on your part that that was the original cost of that property? A. No, sir.

Q. But you used that figure for the purpose of ultimately determining the original cost of that company's property,



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didn't you? A. The best information I could get on that particular property and I used it.

Q. And that was a conjecture, was it not? A. Well, I have explained how I used it.

(Discussion off the record)

By Mr. Miles:

Q. Mr. McShea, at page 199 of your testimony you set forth a figure which you estimate to represent the original cost of the property of the respondent and I think you give that figure at \$4,237,105.09. A. That's right.

Q. I should like to ask you whether upon reflection it is not your opinion that the figure that you have given there is a figure representing in part original and in part historical cost of the company's property. A. I consider it to be what I term the estimated original cost.

Q. Well, having in mind your own answer to me a few minutes ago as to certain properties acquired by one predecessor from another, which you used as the only thing available to you at the time, do you still think that the figure is an estimated original cost, as distinguished from one of original cost and historical cost? A. Yes; I still think it is an estimate of the original cost of all of the property.

Q. Mr. McShea, can you state whether your examination of the books of the predecessor companies of the respondent has been sufficient for you to form any opinion as to whether or not those books were kept in accordance with sound accounting practices? A. I believe they were kept in as sound a manner as the books of most of the companies around that time.

Q. Around that time? A. Yes; and, incidentally, I would like to say that some books back in those days were very well kept.

Q. Have you formed any opinion as to whether the charges for maintenance and capital accounts and things of that sort

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were properly reflected on the books of the predecessor companies? A. We did not examine the payrolls to determine whether a proper segregation was made between capital and expense.

Q. Nor did you determine, I assume, whether a line of poles might have been charged to maintenance which should have been a capital item or vice versa, did you? A. Our examination was not that detailed.

Q. Mr. McShea, referring to Commission Exhibit No. 24, especially as it relates to the predecessor companies of the respondent, why do you apply six per cent times the amount of your estimated original cost for the purpose of calculating what you conceived to be a fair return on the properties of those companies? A. Why do I apply six per cent to undepreciated original cost?

Q. In your estimate of undepreciated original cost. A. Because that was the only indication I had of the value of the property at that time.

Q. In other words, you were not meaning to suggest that in 1910, for instance, a company would be limited to a return on its original cost, were you?

Mr. Miller: Mr. Commissioner, I object to that question as incompetent. That is a legal proposition which I do not think Mr. McShea is competent to answer.

(Discussion off the record)

Mr. Miller: Read the question.

(Question read)

Mr. Miller: I renew my objection, Mr. Commissioner.

The Commissioner: Well, I do not quite follow your objection, Mr. Miller. He does say that he used a six per cent return on the undepreciated original cost. I

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think it is proper to ask him why he uses it in this exhibit and for what purpose.

Mr. Miller: I think that is true, Mr. Commissioner, but that is not the question as I understand it. The question is whether Mr. McShea meant to imply that a fair return as of 1910 was or was not six per cent.

The Commissioner: No; my interpretation of what Mr. Miles' question—let us see if this correct or not—I understood he asked him if he thought in 1910 undepreciated original cost was the basis for the return.

Mr. Miles: That is precisely my question.

The Witness: I would like to take exception to the year you have mentioned because in none of those cases has it gone beyond the ten years of the organization of the companies. In other words, in the case of the Peoples the exhibit covers a period from 1886 to 1894. In the case of the Westinghouse the last year was 1902. The Edison was 1894. The Red Lion is 1900. The Merchants is 1910—that's right. There is one case—

By Mr. Miles:

Q. Yes. Now, in the first place, there is nothing sacred about my use of the year 1910. You can take any year. Now, my question was why you used original cost as the basis? A. In the first place I used original cost as I computed it because we had no other basis. In the second place—

Q. Perhaps you didn't understand my question. Mr. McShea. Assuming that the original cost was definitely known beyond all question by anybody involved in these proceedings of one of the companies as of 1898, why do you use original cost as the basis for calculating a return to which the company would be entitled? A. Because that's the only evidence that I have and that's the reason I used it.

Q. Then you are not meaning to suggest that original cost

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is synonymous with fair value for those particular years, are you? A. I am not meaning to suggest that it is or it was, but I do say it might have been in those years.

Q. It might have been? A. That's right.

Q. So it was conjecture, isn't that right? A. It might have been.

Q. Is it your opinion that the earnings of public utilities particularly electric companies in 1906, for instance, were kept within limits that reflected a return on the original cost of those companies? A. You mean, now, was there a regulation of the companies back in those years?

Q. No; I am not asking you whether there was regulation; I am asking you whether the business itself, the industry itself was kept within a limit on the basis of the original cost? You have offered this exhibit for the purpose of showing a lag in earnings, and I am merely trying to find out why you adopt this starting point for the purpose of establishing the lag? A. The earnings in those days as compared with the present time as between companies might fluctuate from ten to twelve per cent.

Q. As a matter of fact in those days it was on a competitive basis, was it not? A. That's right.

Q. And as a matter of fact in York there was competition? A. I know in some cases there was more than one company, but whether they were competitive, I don't know.

By the Commissioner:

Q. By the same token, Mr. McShea, the electric light companies in the years preceding the '20's, and certainly preceding 1934, earned an original return vastly in excess of ten per cent? A. I don't get your whole question, Mr. Commissioner.

Q. I say in the years up to 1920 and before 1934 many electric light companies earned substantially in excess and

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declared dividends far in excess of ten or twelve per cent?

A. Some companies; yes.

By Mr. Miles:

Q. Why did you use six per cent as the return on property prior to 1919? A. I used six per cent in view of the Commission's resolution of April, 1934.

Q. By what process did it occur to you that a resolution adopted by this Commission in 1934 would be applicable to business in 1906? A. I didn't say it would be applicable to business in 1906.

Q. Then why did you use it? A. I used it as a figure representing the legal rate of interest and, in addition to that, the resolution of the Commission feeling that I did not know whether the rate in 1906 should be four, five or six per cent.

Q. Or over eight per cent? A. That's right. I used it as figure wholly on the basis of the Commission's resolution.

Q. You don't have any opinion, do you, as to what would have been a reasonable rate of return for a utility on its earnings in 1903 or 1906? A. No, sir.

Q. Would you say that the hazards of the business prior to regulation were greater or less than they are today? A. Generally speaking, I might say that business prior to regulation was in the developmental stage.

Q. And it is also generally true that in those days it was not a regulated monopoly but a general business? A. In a great many cases.

By the Commissioner:

Q. And, therefore, more hazardous? A. That's right.

By Mr. Miles:

Q. In your opinion was it as easy to attract capital for a company organized to generate electric energy in 1907, for

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instance, as it is in 1937? A. In order to answer that question I would have to be familiar with the condition of the money market at that time.

Q. I think that is quite true and the only purpose of my question is to inquire why you should suggest to the Commission in an exhibit offered for the purpose of showing a lag in earnings, when you concede that the business was more hazardous, when you concede it was competitive, that it should be restricted to the small return than as it is now. A. In preparing this exhibit a percentage figure had to be used. I did not feel at the time it was prepared that I was limiting the company to six per cent return in those years, because if the Commission did not feel that this figure of six per cent was a proper figure to use for those years, it could substitute a figure of its own.

Q. So that the six per cent was used, as you frankly state, because the Commission, in 1934, adopted a resolution prescribing the rate of return of six per cent in Pennsylvania, because that was the legal rate of interest paid by borrowers of money in those days? A. That's right.

Q. That is a fair statement? A. That's right.

Q. And I believe you have said you had no knowledge as to the cost of money between the years 1896 and 1919, have you not? A. That's right and I have stated my reason.

Q. And you have no knowledge as to the return customarily earned by electric companies during that span of years, have you? A. Up to 1919?

Q. Yes. A. That's right, too.

Q. In estimating the expenses of the predecessor companies for the purpose of determining any so-called lag in earnings, can you state whether the expenses, which you have used, included depreciation, taxes, and other expenses now allowed by the Commission as a deduction from gross revenues? A. The expense figures that were used were developed wholly



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from what I found in the books of this company or from the tax reports.

Q. And you don't know whether they include or embrace all of the expenses which they, under the Commission's present regulatory powers, are permitted to charge against gross revenues? A. It certainly would not include all of the present form of taxes, all of the taxes we have now, as compared to the taxes we had at that time.

Q. But even forgetting the taxes you have no information, have you, as to whether these predecessor companies' expenses embraced other items which are not allowed—annual charges to the reserve and renewals and replacements and maintenance?

A. There is nothing in my figures for annual depreciation.

Q. Nothing in them? A. Nothing for annual depreciation.

Q. Is it a fair statement that there are perhaps some other items of expense now allowed by the Commission which are not included in the figures of expense of the predecessor companies adopted by you for the purpose of determining a lag in earnings? A. You say there might be some other expenses?

Q. Yes. A. I don't think so.

Q. Well, have you made an examination that you feel justifies you in making that answer to my question? A. I have examined the books where they are available and examined the tax reports where the books were not available.

Q. And you have examined the books and accounts to see whether they embraced the items of expense not allowed by the Commission? A. Certainly I have made no attempt to compare the expenses in the old days, back in the 1890's, with the expenses today.

Q. Nor up as far as 1913 have you made any such effort, have you? A. No.

Q. Have you formed any opinion, Mr. McShea, as to whether there was any lag of earnings in the companies that were predecessor to the respondent? I don't ask you to give

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that opinion with respect to each company but just the overall figure. A. Based upon a six per cent return I do believe there was some lag in the case of some companies in the early years.

Q. And to the extent that six per cent was not a fair return for the earlier years that lag would increase, wouldn't it?

A. If it was a deficient rate of return the lag would increase; that's right.

Q. And to the extent that the original cost of the property didn't represent the fair value of the property the lag would be greater, wouldn't it? A. Greater or less, depending on how the cost compared with the value.

Q. I want to ask you this question and it is predicated upon certain testimony that you have given to the Commission: Assuming that a company was organized in 1906 to engage in the generation and sale of electric energy, that it owned property built during that year at a cost to it of \$100,000, and earned a net revenue of \$2,000 a year for five years, and thereafter to date earned a net revenue of \$5,000, will you give the Commission the benefit of your opinion as to how much lag existed in the earnings of that company? A. Based upon what rate of return?

Q. I am asking you for your opinion, sir. A. I can't give you an answer on that.

Q. Therefore you have no opinion as to how this Commission should arrive at lag in earnings, is that correct?

The Commissioner: In stating your hypothetical question, Mr. Miles, do I understand that Mr. McShea is to assume that the property remains constant during these years?

Mr. Miles: Yes, sir.

The Commissioner: That is, there are no substantial additions or reductions in the value?

Mr. Miles: That is correct, sir, that the property remains constant at that figure.

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The Witness: What was the last question?

(Question read.)

The Witness: After the Commission have satisfied themselves of the rate of return to be used in calculating lag, I believe the actual deficiency in earnings below the amount taken by the Commission as a fair return for those years when added together for that period, until such time as they go on a regular earning basis and do earn a fair return, I believe those figures should be added together and that would be the return.

By Mr. Miles:

Q. In arriving at the lag in the manner that you have suggested, it is your opinion that the Commission should apply whatever it conceives to be a fair return for the years in question to the undepreciated original cost of the property? A. That probably would be as good as basis as any under the circumstances.

Q. That is the basis you have advocated in your exhibit, isn't it? A. That is the only basis I was able to use.

Q. Yes; and it is the one you are standing back of now, isn't it? A. That's right.

Q. And you have also assumed in that exhibit that six per cent was the fair return? A. I have explained why I used six per cent.

Q. Does the development of the so-called lag, as set forth in the exhibit we have been discussing, have any relationship to the going value of this company in the light of its presently owned and used property? A. Our Superior Court says it has some.

Q. I don't want to debate with you what the Superior Court says.

Mr. Miller: It is a question of law, Mr. Miles.

Mr. Miles: I beg your pardon, I am trying to get an

*R. A. McShea, Jr.—For Complainant—Cross*

expression of opinion from the witness as to whether or not bearing in mind the property of the companies predecessor to the respondent which he has used and which he has testified in a substantial part no longer exists. I am still asking the witness whether having that in mind he thinks that summary is of any assistance in determining the lag of the present Edison Light & Power Company. He has applied his six per cent return, in other words, to property that is no longer in esse, so to speak. Now, I am trying to find out whether that effects his judgment.

Mr. Miller: It has not been shown that it is not in esse.

Mr. Miles: He has testified that a substantial part of it is not. He stated so earlier in the day.

The Witness: I think I stated some of it is now. I don't think I used the word "substantial".

Mr. Miles: As a matter of fact I think you used one-third or one-fourth.

(Discussion off the record.)

By Mr. Miles:

Q. You say don't you, Mr. McShea, that a substantial part of this is not in existence in the present property of this company? A. I previously said that if the company properly accounted for the retirement of the property at that time.

Q. You think that if they properly accounted for the retirement of the property that that answers the objection I am making to your exhibit? A. I think so.

Q. I do not want to pursue you on one question, Mr. McShea, but you won't state to this Commission that you have personal knowledge of the fact that a very substantial part of the property owned by these predecessor companies is no longer in physical existence? A. That is true of any company.

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Q. All right. A. The respondent itself in 1930 may have installed some property which was reflected in the accounts as a cost and later on retired it. Now, that's true of the respondent and of all the predecessor companies, and certainly a lot of the original property is no longer still in existence but has been replaced by other properties. Does that answer your question?

Mr. Miles: That answers my question. That is all, Mr. McShea?

*Redirect Examination*

By Mr. Miller:


Q. Mr. McShea, I just would like to ask you two questions. With reference to the expense figures in your lag exhibit—that is Exhibit 24—where did you obtain those figures, the expense figures you have used to determine the amount available for return? A. The details or the places where I got the figures for Exhibit 24 are contained on Exhibit 27.

Q. Yes, but Mr. Miles was questioning you with reference to what your expense figures included and whether they included certain expenses which the Commission now allows to a public service company. Did you take your expense figures from company records or reports? A. I did.

Q. And did you exclude any amounts shown in the expense items in those reports or records? A. I excluded some.

Q. And did you exclude any shown in the expense items in those reports or records? A. Well, they were shown in the books or in the reports. In some cases they were amounts for betterments of property, and of course betterments of property are not considered as an expense.

Q. Well, now, did you exclude any items which are now allowed by the Commission as expenses?



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Mr. Miles: I object to that, your Honor, because the witness has testified on cross-examination that he made no comparison of expenses with the present accounting rules of the Commission.

Mr. Miller: Well, I am asking him what he excluded. He testified that he excluded certain items.

(Discussion off the record. Question withdrawn.)

The Witness: All of the costs of operation and maintenance as shown by the books or by the tax reports, although in all cases earmarked as operation and maintenance, were considered as the operating expenses. Such items as annual depreciation— By the way, none of the companies in those days had charges for annual depreciation—and interests paid on notes, expenditures made for betterments of property, and taxes of various kinds, which are not in effect now but which were in effect then, would not be reflected in this exhibit.

By Mr. Miller:

Q. Would the actual expenses of the company be reflected in the reports and records which you used as a basis for the preparation of the exhibit? A. I believe so. The out-of-pocket expenses for operation and maintenance would be reflected in those records.

*Recross Examination*

By Mr. Miles:

Q. Then how do you know the accuracy of the last answer you gave to Mr. Miller? In other words, I am asking you how could you tell that those companies actually charged all of their expenses? A. I rely upon the records.

Q. What you are saying is to the extent that the records disclose that they are there? A. That's right.

Q. I believe you did say you found cases where charges



*H. Root Palmer—For Commission—Cross*

were made to operating expense relating to improvements to property? A. They were necessarily marked as operating expense. The accounts were set up more on the basis of a cash receipt and a disbursement basis, and taking the expenditures or the expenses, I didn't include items of that character.

Q. You also made the observation that practically none of the companies made any annual charge to depreciation; is that right? A. Annual charge to expense for depreciation, and that, I believe, was true of all companies up to 1910, when the Merchants Company had a charge for annual depreciation which was, however, reversed a few years later or in the next year.

Q. Therefor, in your estimate of lag, you have allowed nothing prior to 1910 for depreciation? A. That's right, but I used a non-depreciated rate base.

Q. Wouldn't the fact that those companies didn't make any charges for depreciation indicate to you as an accountant that their books were not kept in respect of and in relation to modern accounting records? A. There were some basic differences; yes, sir.

H. ROOT PALMER, having been duly sworn, was examined and testified as follows:

*Cross Examination*

By Mr. Miles:

Q. Mr. Palmer, you have testified as to certain reasons why, in your opinion, a substantial part of the central generating plant of the respondent should not be included in a rate base. I should first like to ask you this question: Assuming that the property now constituting that plant continues to be owned and used and operated in exactly the manner as is now the case but that the respondent receives a reasonable profit on the sale of

*H. Root Palmer—For Commission—Cross*

the steam to the York Steam Heat Company, would you still contend that the property should be allocated to the two companies in the manner shown on Commission Exhibit No. 20?

A. Yes, sir.

Q. Even though that steam is sold at a compensatory rate?

A. Yes, sir.

Q. Now, if we assume that the property constituting that plant continues to be owned, used and operated in exactly the same manner in which it is now used but that it could be demonstrated that it has a specific emergency value in offering the assurance of a continuity of service to the people of York, would you still contend that the property should be allocated in the manner shown on your Exhibit No. 20? A. Yes, sir.

Q. And even if it is shown that it has an emergency value to the company in supplying a continuity of service and even though the steam heat generated by the company is sold to the York Steam Heat Company, you still would allocate the central plant in accordance with your Exhibit 20? A. Yes, sir.

Q. Why? A. The facilities as allocated are necessary, used or useful in connection with supplying the steam heat service with proper reserve capacity. The surplus capacity available for electric generation or standby would be only the excess capacity over the requirements of the steam heating system, the maximum demands of the steam heating system.

Q. Now, before coming to that question of maximum demands, and so I may follow your testimony, let us assume that this central generating plant continued to be owned by the respondent, that the respondent no longer engaged in the sale of steam heat to its affiliate or anyone else but that the property had an emergency value to the respondent, would you still contend that the property should be allocated as shown on your Exhibit 20? A. There is no steam heating system in existence—

Q. Steam heating business in existence. A. —that would depend upon the situation as of that condition.

*H. Root Palmer—For Commission—Cross*

Q. You mean you have no opinion as to what would be the answer if my hypothesis is assumed to be correct? A. The capacity of the steam generating system is approximately less than one-half of the maximum demand of the Edison Company. Its standby capacity would, therefore, be limited.

Q. Will you state to the Commissioner the circumstances, if any exist, under which you feel that this central generating plant should be all included in a rate base of the respondent?

A. All this property and facilities are used and useful and are used in connection with the supplying of the service to the Edison Company.

Q. You do know don't you, Mr. Palmer, that during 1936 the larger of the turbines in the central plant was operated continuously for fifty-two and three-quarters hours during the time that power was not available from the two sources from which the company receives its power? A. I only know from the testimony at the last hearing.

Q. You mean in making your examination and study leading up to your testimony advocating the conclusion of this central generating plant that you made no personal study of the times when it might have been used for emergency purposes?

A. For the five years, 1931 to 1935, inclusive.

Q. You made such a study? A. Of the generation.

Q. And then, I repeat, you must have known that during 1936 it was used for the period I have suggested; was it not?

A. I made no study of the generating records for 1936.

By the Commissioner:

Q. You made a study of the records for 1931 to 1935, inclusive, the five years? A. Some, but a very small use.

By Mr. Miles:

Q. Do you think that an emergency service such as that to which this plant was put in the flood or in the year 1936 is of

*H. Root Palmer—For Commission—Cross*

any use to the important institutions and the public of the City of York? A. It might have some.

Q. Now, coming to this question of the maximum demand of the Steam Heat Company, I believe at Page 351 of the record you pointed out that the maximum demand of the steam heating system has been 110,000 pounds of steam per hour. During how many hours of the year has such a maximum demand been realized? A. I don't know the duration of the demand, but the facilities for providing that maximum capacity are required regardless of the period of duration.

Q. Then you don't know that during 1936 it was only an hour that that maximum demand was realized? A. Not the period of time; no, sir.

Q. Didn't you consider that, Mr. Palmer, in making these observations you made in your testimony? A. The maximum capacity provides 110,000 pounds of steam per hour as required, whether one hour or more.

Q. All right. Assuming for the purposes of my question that it happened one hour in each of the past several years, and I think you will agree with me that there are 8,760 hours in a year, so even though in this statement the likelihood of sufficient boiler capacity at any time during the hour would be about one in eight thousand, wouldn't it? A. It might.

By the Commissioner:

Q. Under that premise it would be if those figures are correct? A. On that assumption.

By Mr. Miles:

Q. Do you know whether the maximum rating of the boilers in that central generating station is 227,700 pounds per hour? A. No, sir.

Q. You don't know that? A. No, sir.

Q. You mean you don't know what the maximum rating is? A. Not normal operating capacity for similar equipment.

*H. Root Palmer—For Commission—Cross*

Q. I am asking you, do you know what is the maximum rating in the central generating plant, not as to whether it could be operated at the maximum rating. A. No; that is uncertain.

Q. What is an estimate? A. What might possibly be done under emergency conditions, but under reliable operation, normal operation—

The Commissioner: The question was: What was the maximum rating of the boilers, and whether it can be operated at that capacity or not has nothing to do with it.

By Mr. Miles:

Q. Do you know what the rating of the boilers is? (No answer.)

The Commissioner: Assuming that they could not be operated at that, in your opinion, but nevertheless the rating might be considerably higher than the operating capacity. Now, the question is as to the rating only.

Mr. Miller: Do you know, Mr. Palmer?

The Witness: 3,280 boiler horsepower rating.

By Mr. Miles:

Q. I will put it to you in a hypothetical way: Assuming that the maximum rating of the boilers in the central generating plant is 227,700 pounds per hour, you don't have any doubt, have you, that they could be operated at their maximum capacity for one hour? A. No, sir.

Q. You don't have any doubt about that? A. No, sir.

By the Commissioner:

Q. Just a minute, now. You have no doubt that they can be operated at their maximum capacity for one hour. Is their maximum capacity for one hour the rating? (No answer.)

Mr. Miles: I think my next question will cover that, Mr. Commissioner.

*H. Root Palmer—For Commission—Cross*

The Commissioner: All right, go ahead.

By Mr. Miles:

Q. Assuming that the boilers could be operated at their maximum rating for one hour and there would not be any shortage of capacity during the year, and my previous assumption that it was only for one hour during the year according to the records of the company that the maximum was required—

A. The normal standard of rating for boiler horsepower is the evaporation of approximately thirty pounds of water into steam per hour. With 3,280 horsepower installed, the standard rating would be 95,400 pounds of water converted into steam. The 270,000 pounds—

Q. 227,000, I said. A. 227,000?

Q. Yes. A. —would be between 250 and 275 per cent rating.

Q. Well, now, is it or not your opinion that the maximum rating of the boilers is 227,700 pounds per hour, of the boilers in this central plant that we are talking about? A. That is not; no, sir.

Q. You deny that that is the rating? A. Yes, sir.

By the Commissioner:

Q. Let me ask you, Mr. Palmer, a question at this point. As I understand this matter, the rating is a theoretical capacity or an estimate placed on there by the installers of the equipment; that is correct, is it not? A. Yes, sir.

Q. When you buy a boiler the firm sells it to you under certain formula, which I suppose are standard, which give you a rating for the boiler? A. Yes, sir.

Q. And as I also understand it, that is their opinion of what the maximum load that the boiler can deliver operating at peak, is that correct? A. No, sir; that is the standard rating of the manufacturers.

Q. It is the standard rating of the manufacturefs. Now,



*H. Root Palmer—For Commission—Cross*

the 227,700 pounds of steam—that is the rating according to Mr. Miles—now, can that boiler be operated for one hour or one minute to produce that countage of steam, in your opinion or, rather, that equipment? ■ that too high or too low in actual operation for the one minute or the one hour? Can it be done? A. I have stated that under emergency conditions it might be done, but with the manufacturers' rating of thirty pounds of water per hour, 227,000 would require the evaporation or conversion of water into steam of around seventy-five pounds of water per hour.

By Mr. Miles:

Q. Now, Mr. Palmer, have you made any examination of the peculiar facts in this case for the purpose of telling me whether you know or not in the company's experience with this equipment, the maximum capacity of those boilers is 227,700 pounds per hour? A. I don't quite get your question, Mr. Miles.

The Commissioner: Read the question.

(Question read.)

The Witness: No, sir.

By Mr. Miles:

Q. You don't know? A. I don't know whether they have been operated at that or not, no, sir.

Q. Well, assuming that they had been operated at that capacity for one hour, there would be no shortage of capacity at any time during the year, would there, if those boilers were capable of being operated for an hour at that capacity?

A. A shortage of capacity for what purpose?

• Q. For the purpose of meeting both the electric and steam requirements simultaneously. A. There would be a shortage.

*H. Root Palmer—For Commission—Cross*

The Commissioner: To meet the requirements of the electrical current for which it is being operated as an emergency—

Mr. Miles: Your Honor, during the time that it is being operated at its capacity through the process of lost heat certain electrical energy is manufactured.

The Commissioner: Yes, I understand that, but do you mean operating at that maximum capacity, which would supply all of the electrical energy required in York with the failure of the normal source of supply; is that what you mean?

Mr. Miles: That's correct, sir; all that it can produce.

The Commissioner: All that it can produce?

Mr. Miles: That's right.

The Commissioner: Would that meet the normal requirements of York if all the other supplies were not available?

Mr. Miles: It would not meet the peak requirements of York; it would meet the normal requirements, but I am trying to get this witness' opinion as to whether if this plant was operated for an hour at its full capacity, it could produce all the electricity that the company could generate and meet the maximum steam requirements at the same time?

The Witness: No, sir.

By Mr. Miles.

Q. It would not? A. No, sir.

Q. Why not? A. 227,000 pounds of steam per hour produced by the boilers would produce, if the electric generating capacity was available, 11,400 k.w. If that hour was during the maximum demand of the steam heat system of 110,000, it would produce approximately 6,000 k.w.

*H. Root Palmer—For Commission—Cross*

Q. And the total capacity is 6,700, is it not? A. The total capacity?

Q. 6,700 k.w.? A. Yes; of the two turbines.

Q. And under your assumption the bigger turbine would be operating at the same time? A. Yes, sir.

Q. And now, Mr. Palmer, this plant is regarded by the company as a standby or emergency plant. Is it customary to provide reserve equipment in a standby? A. No, sir.

Q. So therefore there is sufficient capacity in that plant to meet the requirements of a normal reserve or standby plant, isn't there? A. For steam heating service.

Q. I am talking about electricity. You don't suggest, do you, that where a company operates and keeps hot the boilers of the plant for emergency purposes that it must be a plant that is capable of meeting the entire peak load or capacity of the company's requirements? A. No, sir.

Q. And don't you feel that this plant has sufficient capacity for reserve purposes? A. No, sir.

Q. Why not? A. Not steam boiler capacity.

Q. What would you add to it for the purpose of making for sufficient capacity, in your judgment? How much additional capacity, in other words? A. If you are providing a reserve for the entire requirements of the Edison Company, it would require the capacity of their maximum demand.

Q. In other words, then, it is your conception that a reserve or emergency unit must have sufficient capacity to meet the maximum demands of the company in question? A. If it's a full reserve; yes. If it is a partial reserve; no.

Q. What are the chances of the emergency occurring under the maximum steam peak? A. Ordinarily that is the time that those things happen, when the facilities are being operated at those capacities.

Q. Did it last year? It happened last year; did it happen at the peak then? A. The flood?

*H. Root Palmer—For Commission—Cross*

The Commissioner: That was in March, about the middle of March?

Mr. Miles: The 19th of March, I believe, sir.

A. It did not.

By Mr. Miles:

Q. Do you know of any year when it did happen to this company? A. I haven't checked those.

Q. I see. Well, if this company has got no use out of this plant as a standby or an emergency unit, would you recommend that the additional investment be made to bring it up to the capacity to meet this peak load? A. No, sir.

Q. Now, Mr. Palmer, you have told me that in your opinion this generating plant should be allocated in the way you suggest on Exhibit 20, even though the steam is sold at a compensatory rate and even though it has an emergency value. Now, I want to ask you to assume that the property of the plant continues to be owned, used and operated in exactly the same manner as is now the case, that as result of its existence and operation in that manner a better rating can be obtained for the energy requirements purchased by the company; do you still contend that it should be allocated in the manner reflected on your Exhibit 20? A. Yes, sir; the facilities as allocated.

Q. So that you stick to Exhibit 20, even if the steam is sold at a compensatory rate, if the plant has an emergency value, and if it permits the respondent to purchase energy at a price cheaper than it could otherwise purchase it? A. That allocation does not take into consideration—or takes into consideration only the facilities used and useful and required in providing the steam heating service,—

Q. And you have— A. —regardless of what uses may be made of it.

*H. Root Palmer—For Commission—Cross*

Q. And you have included all three of the factors I have suggested as being properly considered in determining the extent to which this central plant is used and useful, haven't you? A. Yes, sir.

Q. And you think that you should ignore all three of those factors? A. In considering the facilities used and useful for steam service; yes, sir.

Q. You are not making and considering a rate for steam heating, but you are making and considering a rate base for the electric company and having that thought in mind, I will ask you again: In determining the rate base of the Edison Electric Light & Power Company you are of the opinion that this central generating plant should be allocated in the manner set forth on Commission Exhibit 20, even if, first, the plant has an emergency value; second, the steam heat generated there is sold at a profit; and third, it permits the respondent to purchase energy at a cheaper rate than it could otherwise do? A. Yes, sir.

Mr. Miller: Will you now explain, Mr. Palmer?

Mr. Miles: I assume he will if he wants to, won't he?

Mr. Miller: I assume he will.

The Witness: I have covered that in previous testimony as to the facilities required and used and useful in providing the steam heating service.

By Mr. Miles:

Q. And you contend further, do you not, Mr. Palmer, that the identity of the owner of the central generating plant has nothing to do with the question as to whether it should be excluded in part or in whole from the rate base of the respondent? A. I have given no consideration to the ownership—only to the value of the facilities used and useful.

Q. And that has always been ignored by you in your studies? A. Yes, sir.

*H. Root Palmer—For Commission—Cross*

Q. Now, if you will refer to Exhibit 20, on Sheet 6, under the item described as "Allocated cost of generation by steam power," you show for Account 352 a total cost of \$7,965.78, and which you allocate to steam generation— A. For what year is that?

Q. Sheet 6, on which you allocate to steam generation \$3,186. A. That's for 1935.

Q. All right. Now, isn't it true that according to the classification of accounts prescribed by this Commission, Account 352, engine labor is related only to the cost incurred in operating electrical generating equipment? A. Yes, sir.

Q. Why then have you allocated a portion of that labor to steam generating equipment, or expressed in another way, don't you know that is a violation of the accounting rules of the Commission? A. No, sir.

Q. Why not? The accounting rules require us to charge it to electric generating equipment. A. The plant is being operated at the present by the Edison Company as an electric generating plant. The allocation covers part of the engine room labor which would be required, such as oilers, and wipers, and machinists, and others operating the engines and turbines in connection with the boiler plant and auxiliaries to the steam boiler generating equipment.

Q. Have you or not given any consideration to the Commission's accounting rules with respect to the treatment of engine labor under Account 352 in making the allocation that you suggest? A. That would be allocated to the proper account under steam heating service.

Mr. Miles: Would you mind reading my question?

(Question read.)

The Witness: Yes, sir.



*H. Root Palmer—For Commission—Cross*

By Mr. Miles:

Q. And you think you have complied with that accounting regulation? A. Yes, sir.

Q. Now, is that labor, the engineroom labor, to which you have referred to there, used only in the turbine room? A. No, sir.

Q. It is not? A. No, sir.

Q. Where is it used other than in the turbine room? A. It is used in the entire plant, electric and steam operation.

Q. Is it possible, in your opinion, that you have confused Account 351 and Account 352 in the distribution of these costs?

A. No, sir.

Q. Now, in Account 355, relating to fuel on Sheet 6 of your Exhibit 20, you have allocated all of your costs of fuel to steam generation, have you not? A. Yes, sir.

Q. Isn't it true that Commission Exhibit 6 on Sheet 29 shows that for 1935, 3,161,700 kilowatt hours were generated at the central generating plant? A. Yes, sir.

Q. Now, on Exhibit 20, Sheet 6, you have allocated all of the costs of fuel to steam generation, have you not? A. Yes, sir.

Q. Well, in your judgment, wouldn't it be necessary to allocate against the Electric Company the cost of the fuel consumed for the generation of making kilowatt hours? A. No, sir. That is the cost of producing the steam.

Q. And you think, therefore, that the respondent company should get that for nothing? Do you understand my question? I say, you think that the respondent company should get that energy for nothing, without any charge for fuel? A. No, sir.

Q. Well, then why did you charge against the respondent company certain fuel expenses for the generation of that many kilowatt hours? A. That was covered by the charge for steam to the steam heating company.

*H. Root Palmer—For Commission—Cross*

Q. But you are analyzing these operating expenses of the company? A. Yes, sir.

Q. All right. Now it obviously cost a certain amount of fuel to generate so many kilowatt hours, and doesn't necessarily follow that that fuel should be charged against the company that gets the benefit from it? A. No, sir; not a direct charge.

(A recess was here taken until 1:45 o'clock p. m.)

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AFTER RECESS

H. ROOT PALMER, resumed for further cross-examination.

By Mr. Miles:

Q. Have you studied any of the history relating to the development of the central generating plant and especially the reasons for which it was originally built by the respondent?

A. No, sir.

Q. Do you know why it was originally built by the respondent? A. No, sir.

Q. Do you mean by that that you have not any information as to whether it was originally built for the purpose of generating electricity or for the purpose of manufacturing steam?

A. In my opinion it was built as an electric generating station.

Q. And don't you know that the company was not in the steam heat business at the time that the generating plant was built, to any appreciable degree? A. I don't know, but I believe that's correct.

Q. Now, if the generating plant was built by the company for the purpose of generating electric energy to be sold to the public generally, would that fact in any way influence your judgment as to the propriety of the allocation of the central

*H. Root Palmer—For Commission—Cross*

generating plant in the manner that you have made that allocation on Exhibit 20? A. No sir. My allocation is based on the facilities used and useful in connection with supplying the steam heating service.

Q. And you think that the reasons that motivated the management to build the generating plant have nothing to do with that, is that right? A. Not with my allocation; no, sir.

Q. The point is, you would have made the allocation just as you have made it regardless of that fact, and whether the steam was sold at a compensatory rate and the other factors just mentioned? A. It is my judgment of the facilities used and useful.

Q. Now, Mr. Palmer, if you will be good enough to refer to Exhibit No. 7, which is the wholesale power agreement between the Edison Light & Power Company, the Metropolitan Edison Company, Pennsylvania Water & Power Company, and Safe Harbor Water Power Corporation, and refer to Article 8 of that agreement. Will you read into the record that article, which consists of just one sentence? A. (Reading) "Article 8. Steam Electric Generating Plant. The York Company, York, Pa., agrees to maintain its present steam plant for emergency and standby service."

Q. Would the plant have any considerable value for emergency or standby purposes unless you maintained at least one boiler hot at all times in the year? A. It would have more value if it was maintained with one boiler hot.

Q. It would have practically no value if it was not maintained with one boiler hot, would it not? A. Very small.

Q. And now, will you be good enough to look at the second sheet of that power agreement, which is Commission Exhibit No. 7, and I refer you to Article 3, which sets forth a definition of the phrase "Contract requirements of the York Company."

*H. Root Palmer—For Commission—Cross*

The Commissioner: Page 2 of the agreement.

By Mr. Miles:

Q. Will you read that article and state whether the first paragraph of that article sets forth the energy and describes the energy to be supplied under the agreement? A. Read it into the record?

Q. No; you just read it to your self and tell me whether you agree with that. A. What was the question?

(Question read as follows: "Will you read that article and state whether the first paragraph of that article sets forth the energy and describes the energy to be supplied under the agreement?")

A. It does.

By Mr. Miles:

Q. And sub-paragraphs A, B, C and D are the exceptions, are they not, to the obligation of the York Company to purchase energy under the agreement? A. Yes, sir.

Q. Will you be kind enough to read, which is very short, sub-paragraph A of Article 3 of the power agreement? A. (Reading) "Such electrical power and energy as said York Company may generate in connection with the supplying of steam for heating or for the protection of the service or for the purpose of maintaining its generating plant in readiness to serve."

Q. And now, that is one of the excepted classes of energy, so to speak, which it is not required to purchase from the selling companies under the agreement; is it not? A. Yes, sir.

Q. Now, wouldn't you say, Mr. Palmer, in the light of that specific provision that there is an obligation upon the York Company to maintain a hot standby plant?

*H. Root Palmer—For Commission—Cross*

Mr. Miller: Mr. Commissioner, I do not think it is for Mr. Palmer to interpret the contract. It speaks for itself.

Mr. Miles: Your Honor, the only reason I am asking Mr. Palmer is because he has made—he has been offered here as an expert, and has made on the record many observations as to the reasons why the allocation should be in accordance with Exhibit 20, and under examination this morning he testified that he would adhere to those allocations even though the company was required to maintain it as a generating plant.

The Commissioner: I think it is a proper question from my viewpoint, not being a lawyer, and it seems to me that the answer does not require any expert or legal knowledge, but that it is a matter of plain, English common sense in the reading of that clause there.

Answer the question, if you can.

The Witness: What was the question?

(Question read as follows: "Now; wouldn't you say, Mr. Palmer, in the light of that specific provision that there is an obligation upon the York Company to maintain a hot standby plant?")

The Witness: No, sir. That paragraph makes an exception, "as said York Company may generate." It carries no obligation to generate or maintain a hot plant. It is optional with the York Company.

By Mr. Miles:

Q. Have you read this entire agreement? A. No, sir.

Q. You have not read this agreement before testifying in this case? A. No, sir.

Q. Well, then your testimony as to the allocation of this

*H. Root Palmer—For Commission—Cross*

plant was made without any knowledge of the respondent's obligations under this agreement; is that correct? A. As far as the contract is concerned; yes, sir.

The Commissioner: As a matter of fact the contract, Mr. Miles, was offered after Mr. Palmer had testified, as I remember. Is that so?

Mr. Miller: I don't recall, Mr. Commissioner.

Mr. Miles: I don't doubt that, Mr. Commissioner.

By Mr. Miles:

Q. And it is a further fact, is it not, that you would adhere to your allocations on Exhibit 20 despite any of the provisions of this agreement? A. Yes, sir; on the basis of my allocations, yes, sir.

Q. Even without knowing what the agreement says? A. My allocation is based upon the facilities used and useful in connection with supplying steam service.

Q. And you would adhere to those allocations without any knowledge as to what might be contained in this power contract? A. Yes, sir.

Q. And now, do you know the capacity of the Violet Hill sub-station through which energy is received by the respondent from Pennsylvania Water & Power Company? A. No, sir.

Q. Do you know the capacity of the Smith Street substation from which energy is received from the Metropolitan Edison Company? A. No, sir.

Q. Do you know what is the peak demand of the Edison Light & Power Company? A. As I recall, 16,500 k.w. That is from memory.

Q. Mr. Palmer, am I to understand that you have made this allocation, that you propose, without any knowledge of the capacity of energy that is available to the respondent through this contractual arrangement with the Pennsylvania Water &



*H. Root Palmer—For Commission—Cross*

Power Company or the Metropolitan Edison Company? A. Yes, sir.

The Commissioner: Do you contend or are you going to contend that the Pennsylvania Water & Power Company and the Metropolitan Edison Company and the Safe Harbor cannot supply the maximum demand to the Edison Light & Power Company with their present facilities and the arrangement?

Mr. Miles: I am going into the K.v.a. capacity of each one of those substations.

The Commissioner: Yes, I understand that, but is it your position that those companies under that contract—either under the contract or through the capacity facilities cannot supply the maximum load?

Mr. Miles: Our position is that neither one by itself can supply it.

The Commissioner: Neither one by itself can supply it, but they are both there?

Mr. Miles: Yes; but if either one is out, it certainly seems a reasonable proposition that it goes to the question of the emergency plant.

(Discussion off the record.)

By the Commissioner:

Q. Did you eliminate all or any part of the plant for the generation of electricity? A. Yes. There was one engine in the electric generating end and the conversion equipment in connection with the sale to the York Railways Company was optional,—either eliminate from the electric rate base or provide a compensatory rate for it.

By Mr. Miles:

Q. I understand, when we left off our discussion, that you testified that you did not know the capacity of either the Violet

*H. Root Palmer—For Commission—Cross*

Hill station of the Pennsylvania Water & Power or the Smith Street substation of the Metropolitan Edison? A. No, sir.

Mr. Miller: Mr. Commissioner, I object to that question as irrelevant since Mr. Palmer has stated that the basis of his allocation was properly included in the rate base of the steam heat plant, that he included all property which he thought was used and useful in the generation of steam under the steam heat plant as property which would be available for use or used in that service of supplying steam to the steam consumers, and that they should pay the return on that property investment, and he eliminated from that rate base the property which would be used in the electric service on which the electric rate payers should pay.

The Commissioner: I understood Mr. Palmer to say that he had eliminated from the rate base any part of this steam heating plant—

Mr. Miles: —which he considered non-useful, I think he said.

The Witness: It had been allocated to the production of steam.

By Mr. Miles:

Q. Has any part of this plant been allocated to the production of electricity in your calculation for the Edison Light & Power? A. I have eliminated no electrical generation with the exception of the engine. It remains in the appraisal.

The Commissioner: I think your objection, Mr. Miller, does not go to the question that Mr. Miles is now asking. I think it is perfectly proper for Mr. Miles to ask Mr. Palmer whether he knows the capacity of those two energies to the Edison system.

Mr. Miller: I don't see, Mr. Commissioner, what that

*H. Root Palmer—For Commission—Cross*

has to do with the allocation of the property in the steam heat plant.

The Commissioner: Let us find out.

By the Commissioner:

Q. You answered, you didn't know, did you? A. Yes, sir.

By Mr. Miles:

Q. Do you know the peak demand of the respondent? A. As I recall, it was 16,500 k. w.

Q. Well, do you know whether or not either of the two substations that I have referred to have sufficient k.v.a. capacity to supply the peak demands of the respondent?

Mr. Miller: I will object to that, Mr. Commissioner, as immaterial, in view of the basis which Mr. Palmer has testified he used in making his allocation to the steam plant.

(Objection overruled.)

A. No, sir.

By Mr. Miles:

Q. But if you knew it would not affect the manner in which you regard it as proper to allocate the generating facilities between the two companies, would it? A. No, sir.

Q. Do you know that wholesaling companies are required under the contract to supply energy for the entire load of the Edison Company in the event of the failure of either one of the selling companies to deliver? A. I do not.

Q. Would knowledge on that subject affect in any way the manner in which you allocated these generating facilities? A. No, sir.

Q. In order, Mr. Palmer, that I may follow what you have done will you state under what circumstances you regard the

*H. Root Palmer—For Commission—Cross*

generating facilities of this company used and useful and properly in the rate base? A. The value of electric generating facilities as standby or reserve would depend upon the time and conditions at which that estimate was made. If such an estimate was made at the time of the maximum demand on the steam heating system, there would be very little surplus capacity except the use of the reserve boiler for the steam heating service, to be used in connection with electric generation. If the estimate was made at the time when the steam heating requirements were minimum or not in operation, the facilities for electric generation would be greater.

By the Commissioner:

Q. Well, Mr. Palmer, in line with the question asked you previously by Mr. Miles as to the conditions at the time when this demand was made on this standby service last March, in connection with that and in connection with your last answer, I would like to ask you this question: Suppose, for example, we had—although we do not, suppose we had at this time flood conditions that were comparable to those in the Ohio Valley at this time, where they have freezing weather in the territory affected, if they had anything comparable to those flood conditions—probably either of these companies or perhaps certainly one of them—we would have reason to expect that their facilities would be out of commission and that it would require this standby service. Now, with such temperature and conditions as they have in the Ohio Valley, then under your theory wouldn't the maximum capacity, probably practically the greater part of the capacity of that plant be absolutely required for the furnishing of steam? A. Yes, sir.

Q. And, therefore, would not be available in anything like a reasonable capacity for this standby service for electricity; is that right? A. Yes, sir.

*H. Root Palmer—For Commission—Cross*

By Mr. Miles:

Q. Why would you say that the maximum capacity is needed for delivery to customers?

(No answer.)

The Commissioner: Perhaps I may have misphrased my question. I meant that the maximum steam demand would be required at that time, because that is the time when it is required—in cold weather, isn't it?

Mr. Miles: But only practically momentarily, Mr. Commissioner.

The Commissioner: Well, the demand would be greater than in warmer weather.

Mr. Miles: We have a graphic chart that shows the demand, Mr. Commissioner.

The Commissioner: As I understood your question, perhaps I erroneously understood it, you were indicating the last year weather conditions which were bad as to temperature; weren't you?

Mr. Miles: No. I was asking the question; whether at the time of the flood of last year these facilities had to practically carry the entire load.

(Discussion off the record.)

By Mr. Miles:

Q. You don't know whether, during the flood conditions last year, the Electric Company ran at full capacity, generated its full capacity and at the same time took care of the steam situation, do you? A. I do not.

Q. And if you did know it would not affect your allocation of these facilities, would it? A. No, sir; it would not.

Q. Mr. Palmer, assuming that the central generating plant is a standby plant and maintained for that purpose, in your

*H. Root Palmer—For Commission—Cross*

opinion does that fact make the generation of the steam a by-product or a principal product? A. Under the conditions of the plant of the York Company the Steam production for heating service is the principal operation of the plant.

Q. And you are of that opinion regardless of whether the generating plant is maintained as an emergency unit or not?

A. Yes, sir. A very small proportion of the total steam produced in that plant is used in electric generation, direct electric generation. There is some used through the steam heating turbine.

Q. And now, isn't it a fact that in the revenue derived from the use of the central generating plant over and above the cost of additional fuel necessary to maintain it as a hot standby constitutes a reduction in the cost of the power to the respondent? A. I don't know.

Q. You don't know? A. I don't know.

Q. You have not given any consideration to that factor in determining the cost of generating the steam? A. There is no specific item set forth in the contract to provide what, if any, effect that has on the purchase price.

Q. Do you know of any additional expense to which the respondent is put in connection with using that plant for the generation of steam that he would not incur in order to maintain it as a hot standby plant except the cost of the additional fuel?

Mr. Miller: Mr. Commissioner, I must object to that as improper cross-examination and irrelevant, in view of Mr. Palmer's theory of allocation, that the steam heating plant should not be included in the rate base of the Electric Company any more than the other facilities owned by a private corporation or a private individual, which are available to the Electric Company, should be included in the rate base of the Electric Company. They can buy electricity from the steam heating company and the cost



*H. Root Palmer—For Commission—Cross*

of that electricity, in emergencies or in ordinary times, should properly be included in their operating expenses and the allocation of the property should not be affected, and on the theory that Mr. Palmer has testified to and the theory on which he has presented his testimony should not be affected by the items which Mr. Miles is now cross-examining him on.

The Commissioner: I think that the objection of Mr. Miller is sound in that respect, because Mr. Palmer has repeatedly stated, in answer to the questions, that under any circumstances, either the failure of either one of these two companies ~~to have the ability~~ to deliver the maximum demand or any of the other factors—he says that he adheres to his set-up as set forth in Exhibit 20. Under those circumstances it seems to me it is futile to cross-examine him further on that theoretical situation or actual situation, because he adheres to his theory or his hypothetical basis as set forth in Exhibit 20, and I think that is as clear as it can be.

Mr. Miles: Except this, your Honor: There comes a time when the Commission will consider this record.

The Commissioner: That is true, Mr. Miles, but you have your witnesses and you can present any picture that you think is the true one and that will be in the record also. I understand the witness says that under no circumstances would he deviate from his Exhibit 20.

(Discussion off the record.)

By Mr. Miles:

Q. Is it a fact, Mr. Palmer, that you can conceive of no circumstances that would justify the allocation of the central generating facilities in any manner other than that you have placed upon them in Exhibit 20?

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Mr. Miller: I do not think that is quite a fair question, Mr. Commissioner.

The Commissioner: If you will add to that: Under the circumstances as developed by his investigation.

Mr. Miles: That is quite all right, sir, with me.

The Witness: What is the question?

(Question read as follows: "Is it a fact, Mr. Palmer, that you can conceive of no circumstances that would justify the allocation of the central generating facilities in any manner other than that you have placed upon them in Exhibit 20?")

By Mr. Miles:

Q. Based upon your investigation?

The Commissioner: And knowledge of the situation in this case?

The Witness: No, sir.

By Mr. Miles:

Q. And you think that you have investigated and considered all of the facts that are relevant to this question? A. Yes, sir, for the purpose for which the allocation was made.

Q. Now, Mr. Palmer, referring to Page 370 of the record, is there not an error in your statement given at the bottom of Page 370 and carried over to Page 371, in which you said that the total generating cost and operating cost of the steam plant was \$139,498.98 and the subsequent computations based upon that figure? The point is, did you not fail to deduct \$25,443, which you have allocated on Sheet 6 of Exhibit 20 to the transmission group of sub-stations? Maybe I can clarify it a little bit more by calling your attention to the column headed "Total Cost" on Sheet 6 of Exhibit 20. Now, that, as I understand it, is intended to represent the total cost incurred in connection

*H. Root Palmer—For Commission—Cross*

with the generation of steam, is it not? A. Yes, sir; the total cost of operating the steam plant.

Q. The whole steam situation? A. Yes, sir.

Q. The total cost of operating the entire central generating plant, is that right? A. Yes, sir.

Q. Well, now, did you not have deducted from that figure for the purpose of arriving at the allocation which you have made in your testimony, the figure of \$25,443, which you show in the column headed "Transmission Group"? My point is: I think you made an inadvertent error in your testimony that is not made in your exhibit and I merely wanted to know whether you desired to correct it? A. The \$25,443 is included in the total cost of operating the generating station, and deducting that from the amount allocated to steam generation, on Page 6 of Exhibit 20, leaves a difference of \$36,601.

By the Commissioner:

Q. If you had 25 and 11 you would get 36, and if you deduct 36 from 138 you would get 102, wouldn't you? A. The total cost of operating the steam plant was \$139,498.98.

By Mr. Miles:

Q. The point, if it will be helpful at all, that I am trying to develop is that the exhibit is correct on your theory, but when we come to your consideration of it on Page 371, where you get the net cost of generating, the \$40,973 is incorrect by the amount of \$25,443. Now, will you check me and see whether that is right or not? A. Yes, sir; the \$40,973 is correct, and is included in the annual report of the company in the generating group. In the allocation (Page 6, Exhibit 20) that \$40,000 has been allocated between the transmission group and electric generation group.

Q. You are convinced that your figure of \$40,973 is correct, on Page 371? A. Yes.

*H. Root Palmer—For Commission—Cross*

By the Commissioner:

Q. Mr. Palmer, can you reconcile that figure of \$40,000 on Page 6 of Exhibit 20? A. No, sir.

Q. It can't be done from that? A. No, sir.

By Mr. Miller:

Q. Are they comparable figures? A. No; they are not comparable figures.

By the Commissioner:

Q. Where did you get that figure? A. From no exhibit that has been submitted. That was read from memoranda.

Q. Made by you? A. Yes, sir.

Q. And those statements on Page 371; that is, the figures there, do they reconcile with Exhibit 20, Page 6? A. They are not comparable.

Q. They are not? A. No, sir. Page 371 takes into consideration the credit for steam sold to the heating company and Exhibit 20 does not; it just allocates the operating expenses.

By Mr. Miles:

Q. Mr. Palmer, I forgot to ask you this morning when I propounded several hypothetical questions based upon our hypothesis of this case, whether your allocation, in Exhibit 20, would be changed or affected in any way if the facilities continued to be owned, used, and operated as at the present, but all energy was sold to the York Railways Company at a profit. A. No, sir; the allocation did not take into consideration those factors.

Q. And such questions as the power factors, the load of the York Railways Company, and power factors of the Edison Light & Power Company would in no way affect your judgment as to the allocation, would they?

Mr. Miller: Mr. Commissioner, I dislike to object so much, but I do not want to be taken as admitting that

*H. Root Palmer—For Commission—Cross*

these hypotheses propounded by Mr. Miles are proper in any way or represent a proper theory of allocation. I want to place my position on the record with regard to that, and I certainly intend to object to any testimony to be presented by the respondent in support of these hypotheses.

By Mr. Miles:

Q. You have eliminated \$84,000 in the reproduction cost of the respondent's property on the theory that that much of it is properly allocable to the York Railways Company, have you not? A. Either that or adjustment of the rate.

Q. Yes; but you have chosen—and I think your exact language was, you have chosen as between the two alternatives to eliminate it from the reproduction cost, have you not? A. Yes, sir.

Q. You have taken it out of the rate base? A. Yes, sir.

Q. And your judgment as to the propriety of doing that would not be affected, would it, by the ownership, and no matter how it was continued to be used? A. No, sir.

Q. Do you know what the power factor of the York Railways Company load is? A. I do not.

Q. Do you know what is the power factor of the Edison Company's load exclusive of the Railways' load? A. I do not.

Q. Have you any approximate idea what those loads are, power factors I mean? A. Well, my judgment would be that the railway load supplied through the rotary converters as operated would average between ninety and ninety-five per cent and possibly at times a little higher.

Q. Now, what about the power factor of the Edison Light & Power Company load; do you have any opinion as to the approximate power factor?

The Commissioner: Exclusive of the York Railways'!

*H. Root Palmer—For Commission—Cross*

Mr. Miles: Yes; exclusive of the York Railways'.

The Witness: No; I don't know exclusive of the York Railways'. The power factor of this system including all loads probably averages between eighty and eighty-five per cent; at least that is the power factor provided for in the purchase power contract.

By Mr. Miles:

Q. Isn't that eighty or eighty-five per cent after correction?

A. That's the provision for maintaining eighty-five per cent or eighty per cent power factor.

Q. After correction? A. That's the total of the system. Now, separating the railway load from it, I don't know.

Q. You don't know what it is before correction as distinguished from after correction? A. I do not. My understanding of the operation was that on Monday and Tuesday of each week the large turbine, the 5,000 k.v.a. turbine, is operated for from seven to nine hours, from about seven o'clock until three or four o'clock in the afternoon to correct for power factor and voltage on the Edison Company's system.

Q. Well, do you know whether the Railways' load has any considerable effect upon the power factor correction? A. I don't know.

Q. Well, if it has any effect whatever it would represent savings to the Edison Light & Power Company, wouldn't it? A. If of sufficient magnitude; yes.

Q. Do you know what is the coincident demand of the Railways Company? A. No, sir. I was advised that the demand was between nine hundred and a thousand k.w.

Q. Well, it isn't coincident with the maximum demand with the rest of the Edison Light & Power's load, is it? A. I don't know.

Q. Well, if the load of the Railways Company were discontinued, would it have the effect of increasing or decreasing



*H. Root Palmer—For Commission—Redirect*

the average cost of purchased power; if you know? A. I don't know. I made no study of that.

Q. And you gave no consideration to any of those factors when you chose to exclude—adopting your own language—the \$84,000 in the rate base of the Edison Company, did you? A. No, sir. I did have in mind a provision in the company's general rules and regulations filed with the Commission, P. S. C. Pa. No. 8, effective February 7, 1935: "The consumer shall pay the cost of any special installation necessary to his particular requirements for service at other than company standard voltage."

Q. What application does that have to this situation? A. The company is providing special equipment for that particular customer—

Q. Yes. A. —at a different voltage, not standard voltage. There is no other customer using the six hundred volts direct current except the Railways Company.

Q. When was the order passed, which you just read? A. It was filed effective February 7, 1935.

Q. And of course that equipment has been in place and in service for many, many years prior to that date, has it not? A. I assume so.

Q. Now, Mr. Palmer, the identity of the owner of the \$84,000 worth of property which you assigned to the Railways Company has nothing to do with your conception or approach to the exclusion of it from the rate base, does it? A. No, sir.

*Redirect Examination*

By Mr. Miller:

Q. This P. S. C. Pa. No. 8 to which you referred as requiring the consumer to bear the cost of the facilities necessary for altering the voltage for service to the customer, is that an order of the Commission or a tariff filed by the respondent

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*L. C. Bierman—For Commission—Cross*

itself? A. It is in the general rules and regulations in the tariff filed by the company.

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LINN C. BIERMAN, having been duly sworn, was examined and testified as follows:

*Cross Examination*

By Mr. Miles:

Q. Mr. Bierman, referring to the one exhibit which you call Commission Exhibit No. 31 and your testimony as to the cost of financing. I should like to ask you whether or not with one exception all of the securities listed on that exhibit do not represent bonds sold by public utilities? A. I believe that's correct, sir.

Q. Well, now, is it your opinion that the common stock of the Edison Light & Power Company could be sold on a basis as favorable to the company as an issue of first mortgage bonds? A. No; I don't believe it could be.

Q. In making your estimate as to the commissions or underlying charges which would likely be incurred by the respondent under the reproduction cost theory, you have assumed, have you not, that it would sell bonds as distinguished from stock, as it now has outstanding? A. Yes.

Q. So that by the reproduction cost theory, if you were reproducing this company with its existing capital, you would raise your estimates as to the cost of financing, would you not, over and above that mentioned in your testimony? A. I believe I used a higher figure, a somewhat higher figure than that shown by this exhibit.

Q. Let us put it this way: You used a figure of two and a half per cent as representing the commissions or underlying

*L. C. Bierman—For Commission—Cross*

payments that the Edison Company would be required to pay?

A. That's right.

Q. And now, isn't that about comparable with the average figure of these various bond issues that you referred on Exhibit 31? A. As I remember, the average figure was somewhat less than two and a half per cent.

Q. On this exhibit (indicating)? A. Yes. That's a weighted average.

Q. Well, regardless of what the weighted average is on the exhibit, is it your opinion that that company could finance common stock on the basis of two and a half per cent commission or discount? A. I believe they could.

Q. Can you give me any illustration that you have to support that observation? A. No; I can't.

Q. Do you know of any company that has been able to do that in the past two or three years? A. I do not.

Q. Therefore it is, frankly expressed, a guess on your part, is it? A. It's an opinion.

Q. An opinion but based on no precedent that you have any knowledge of; is that right? A. That's right.

Q. Now, Mr. Bierman, in your allowance on Exhibit No. 31 and your testimony with respect thereto of one-half of one per cent to take care of what you termed the mechanical costs in connection with the cost of financing, did you give any consideration to the expenses incurred incident to the registration of securities with the Securities and Exchange Commission? A. I really used a weighted average of the amount shown here and I don't know whether it included that or not.

Q. Is it not a fact that you didn't have that in mind when you made up this exhibit? A. I really worked from this tabulation (indicating).

Q. And you gave no thought to that increased cost? A. That's right. All I worked from was this tabulation (indicating).

*L. C. Bierman—For Commission—Cross*

Q. So that that increased cost is not included in the tabulation; it is not reflected in your estimate, is it? A. That's right.

Q. Have you any opinion as to what it would cost the respondent to register with the Securities and Exchange Commission an issue of, say, three million dollars of bonds? A. No; I do not.

Q. Referring to your testimony on Page 151 of the record, Mr. Bierman, wherein you suggest the elimination from the Day & Zimmermann overheads as contained in their 1934 appraisal, under Structural Accounts, of certain allowances of contractors' profits, contractors' overheads, omission and contingencies, and architect fees, is it not a fact that those overheads are applied to a relatively small percentage of the structural accounts included in that appraisal? A. Yes; that's right.

Q. And dollarwise it amounts to a trifling sum? A. That's right.

Q. I wish you would look at Page 151 of the record and see where you have enumerated those allowances which I have just enumerated in Day & Zimmermann's appraisal as thirty per cent, where you have suggested twenty-seven per cent. A. As I remember that particular item, I think it was pyramided.

Q. But your own testimony gave certain allowances. A. Twenty-seven per cent or thirty per cent, but as a matter of fact it is actually thirty per cent as stated in the appraisal; that is, certain items are pyramided on top of other items.

Q. And that is what you meant by the thirty per cent? A. That's what I meant by the thirty per cent.

Q. Isn't it a fact that the reproduction cost estimates submitted in this case were confined solely to the reproduction cost estimates made by Day & Zimmermann, Incorporated, as of June 20, 1934, less certain deductions therefrom as testified to by Mr. Palmer, less certain deductions in overheads? A. That's right.

*Theodore E. Seelye—For Respondent—Direct*

Q. And isn't it a fact that you have not made a personal inspection or appraisal of the respondent's property for the purpose of forming any independent opinion as to its reproduction cost? A. Yes, sir.

Mr. Miller: No questions, Mr. Commissioner. That is all.

## EVIDENCE ON BEHALF OF THE RESPONDENT

THEODORE E. SEELYE, having been duly sworn, was examined and testified as follows:

By Mr. Miles:

Q. Will you state, please, your present occupation? A. I am vice-president of Day & Zimmermann, Incorporated.

Q. And what is the business of Day & Zimmermann, Incorporated, and their experience in connection with the conduct of that business? A. Day & Zimmermann, Incorporated is an engineering corporation consisting primarily of a group of consulting engineers who are engaged in engineering reports of various characters, public utility properties, industrial properties, and other types of business. They have been engaged in ownership, operation, and management and construction of public utility properties and they engage in reports and appraisals for financing, rate litigation, and other purposes of public utility properties in various states. If it would be of assistance to you I can cite—

Q. I think it might be well for the purposes of the record to cite some of the investigations and reports that Day & Zimmermann have had occasion to make.

The Commissioner: I do not want to interrupt but I think that the Commission's counsel is ready to con-



*Theodore E. Seelye—For Respondent—Direct*

cede the qualifications of Day & Zimmerman, Incorporated.

Mr. Miller: Certainly, we admit Mr. Seelye's qualifications.

Mr. Miles: If your Honor will permit me, I do not want to delay it and appreciate the offer in regard to Day & Zimmermann, but I would like to have Mr. Seelye's qualifications appear as a matter of record.

The Commissioner: As you choose.

By Mr. Miles:

Q. Mr. Seelye, will you state what has been your own experience in connection with the construction, operation and valuation of public utilities including electric utilities? A. As I stated initially I am at the present vice-president of Day & Zimmermann, Incorporated who are engaged in work in connection with work concerning this question you have asked me about.

During my engagement with them, which has been for a period of nearly four years, my time has been principally occupied in connection with public utility investigations. These investigations have included rate litigation before the Illinois Commission in connection with the Public Service Company of Northern Illinois and the Western United Gas & Electric Company, those two properties aggregating about one hundred fifty million dollars in property.

I was also responsible for the preparation of the reproduction cost estimates of the Commonwealth Edison Company of Chicago, the reproduction cost of which property was about three hundred twenty million dollars.

Subsequent to that I was engaged before the Maryland Commission in testimony and litigation in connection with the rates of the Conowingo Power Company.

I have also been engaged before the New York Commission in connection with the rates of the Syracuse Lighting Company,

*Theodore E. Seelye—For Respondent—Direct*

which is a property operating in the central part of the State, a part of the Niagara Hudson Company.

Q. What prior to that? A. Prior to that I was vice-president of Gannett, Seelye & Fleming, Incorporated of Harrisburg, which company was engaged in engineering, and construction, and management of public utility companies as well as construction of other types. We operated properties in a number of states in the United States—I think some sixteen or eighteen. We operated properties in the Argentine, Brazil and Chile and for a short time in England.

Prior to that I was with the State of Pennsylvania, Division of Engineering of the Water Supply Commission, subsequently the Department of Forests and Waters, in charge of the investigation of dams in this State following the failure of the Austin Dam at the time the act was passed by the 1930 Legislature.

Prior to that I was in New York City as hydraulic designing engineer with the Electric Bond & Share Company.

Prior to that I was with the United States Engineer Department on the construction of locks, dams, wharves, and so forth; that is, the Engineering Department of the United States Army.

During the War I was in the service and subsequent to the War was in charge of the division for the purpose of appraising the War damages to the transportation service of Belgium, for the War damages before the Peace Commission.

I studied engineering at the University of Michigan and am a member of the American Society of Engineers.

Q. And now, approximately when was Day & Zimmermann employed to make an investigation of the properties of the respondent in this case? A. In the latter part of October, 1936.

Q. Can you state the character and the scope of the investigation which your firm has undertaken? A. We have for the purpose of the rate matter made a complete check and, where

*Theodore E. Seelye—For Respondent—Direct*

necessary, a re-inventory of the physical property of the Edison Electric Light & Power Company for the purpose of preparing reproduction cost estimates.

We are at the same time, at the present time engaged in making an original cost estimate of the property of this company based upon the inventory which was prepared of the presently owned property of the company.

Q. That is prepared by Day & Zimmermann previously to this time? A. Primarily it was prepared for this present time, sir. I went over it again to insure its accuracy.

Q. Wasn't this property appraised by Day & Zimmermann in 1934? A. Yes, sir; but we didn't go into as much detail as this.

Q. I mean that Day & Zimmermann did prepare an inventory? A. Yes, sir.

Q. There was an inventory prepared at that time? A. Yes, sir. We found our previous inventory helps a great deal, naturally, in getting this one done, because a lot of it was all ready for us.

We are engaged likewise in studying the company's facilities from an operating standpoint, particularly with reference to the generating station and we are making studies of the operating expenses, earning expenses of the company for the purpose of developing what, in our judgment, would represent a true statement of the earnings and expenses.

By Mr. Miles:

Q. So that generally speaking as I understand your summary you are investigating and attempting to establish the estimated original cost of the respondent's property, estimated reproduction cost new and depreciated of the respondent's property to properly portray its revenues and expenses and to present all relevant factors which seem to be necessary in connection with the determination of its rate base? A. Yes, sir.

*Theodore E. Seelye—For Respondent—Direct*

Q. Now, what member of your organization, Mr. Seelye, has been in direct charge of the investigation of the original cost of the respondent's property? A. This work, which is handled by our engineering department, is directly under Mr. Harry A. Reed as well as the work of completing the reproduction cost estimates and other engineering studies which are being made.

Q. So that Mr. Reed is directly responsible for the original cost work and for the completion of the reproduction cost study? A. Yes, sir.

Q. Now, what member of your organization is in charge of making the investigation? A. The investigating work is under the direction of Mr. David Katz.

Q. And he has been in charge of what I understand will be a separate investigation and study of the central generating plant and its use of the respondent? A. Mr. Reed has been generally responsible for these things but he has not been here for sometime—

Q. I will come to that, but he is the one who is in charge of that phase of it? A. That's right; yes.

Q. Now, will you state, Mr. Seelye, about how far Day & Zimmermann have progressed with their studies and conclusions and the reasons, if any, why this work has not been completed? A. We have completed the reproduction cost estimates to the extent of preparing the final exhibits. They are now in course of preparation. They will be finished in a few days—any time, in fact.

The original cost estimates involve the very difficult work of studying the company's accounting for the purpose of applying to the inventory the prices of all property which can be identified from the company's records or work orders. This covers, of course, a great deal of property and is a laborious process and cannot be handled by man power. In other words, we can't put fifty men on it and have it done fifty times as

*Theodore E. Seelye—For Respondent—Direct*

quickly than by one man. That work is progressing and is perhaps two or three weeks from completion—not over that.

A large part of the accounting work has been completed, but nothing yet has been set up in exhibit form because of the illness of Mr. Katz.

Q. And where is Mr. Reed now? A. Mr. Reed is home, sick.

Q. And has the investigation by your firm, including of course you and your associates, progressed sufficiently for you to have formed an opinion as to the reproduction cost new of the respondent's property? A. I just got a figure from Philadelphia last night. I have only, however, the figure for the electric property.

Mr. Miles: If your Honor please, I think in fairness to counsel on the other side, I should make this statement at this time:

The actual exhibit relating to the reproduction cost of respondent's property is not completed. I do not want to press or urge the Commission to let me interrogate Mr. Seelye in any way about that exhibit if counsel for the other side, possibly, or the Commission feels it should not be done. I simply wish to be perfectly frank and to get as far as I can under the obstacles that confront us.

The Commissioner: Do I understand that Mr. Seelye is prepared to testify to a round figure or to a figure that was given to him either by telephone or by letter or some other way just now from Philadelphia without any corroborating exhibits?

Mr. Miles: That's correct.

The Commissioner: The total figure has just been given to him without having available the corroborating exhibits and papers to present?

Mr. Miles: That is right, sir.

*Theodore E. Seelye—For Respondent—Direct*

Now, our situation is simply this, Mr. Commissioner, and I think this is the appropriate time to state it so your Honor can decide what is best for the orderly conduct of this hearing.

It is an unfortunate coincidence but nevertheless a true one that Mr. Reed and Mr. Katz, who are the two principal heads of this entire investigation, are ill. I don't know just how much incapacitated they may be, but I have in my possession, if your Honor wants to make it a part of the record, certificates from their attending physicians as to the nature of their illness, when they became ill, and when they may be able to return to work.

The Commissioner: Mr. Miles, I do not want to take that position, because I am entirely ready to accept your statement of the situation, as you know it better than we do, but we would like—

Mr. Miles: The reason I got these certificates was not because I did not think your Honor would be unfair about it, but we were genuinely embarrassed by both of these men having been taken ill at the same time, and we did not want any misapprehension about the facts.

The Commissioner: Then, as I understand it, the only matter that you would be ready to proceed with would be testimony as to the sum total figure?

Mr. Miles: Yes, sir; and one or two observations.

The Commissioner: And one or two observations concerning that and in relation to it. The exhibits are not here?

Mr. Miles: That is right, sir.

The Commissioner: And you have no other testimony available because of the circumstances you have described as to your inventory or appraisal or accounting or anything else?



*Theodore E. Seelye—For Respondent—Direct*

Mr. Miles: That is correct, sir.

The Commissioner: Now, I wish you would simply state for the record, Mr. Miles, the reasons as you know them why these two main witnesses in connection with the work on the ground are not here and when, according to their doctors—I do not want the doctors' certificates, but when, according to the doctors, they will be available for examination and also after that when you would be ready with the exhibits in connection with the various phases of this work.

Mr. Miles: Your Honor, from a personal investigation which I have made, and from my own personal knowledge, I can state that Mr. Reed was taken ill on January 15, 1937; that Mr. Reed is what might be termed the principal factor in the preparation of this case, having been charged with preparing the exhibits of original cost and the reproduction cost estimate which the company desires to file and, in conjunction with Mr. Ink, a study and report with respect to the central generating plant. I am informed, personally, by the attending physician of Mr. Reed that he will be unable to resume his work for at least a week.

I am further personally informed and have knowledge of the fact that Mr. Katz, who is one of the principal auditors of Day & Zimmermann and has been in entire charge of the accounting investigation of the case was taken ill on Friday afternoon of last week and is now confined to his home and will be there, according to a report which I have received from his office, until on or about February 4th. That is the doctor's statement.

Now those two men are absolutely indispensable to this company in the orderly and proper presentation of its case, and they are the facts that I have learned of my own knowledge with respect to them.

*Theodore E. Seelye—For Respondent—Direct*

The Commissioner: Let me ask you this question: As I understand it from your statement both of these gentlemen with reasonably good luck will be available within a week or ten days?

Mr. Miles: Yes, sir; to complete their work.

The Commissioner: To complete their work?

Mr. Miles: Yes, sir.

The Commissioner: And the exhibits necessary for their testimony, is the situation such that the work in that connection can be continued in their absence or will it have to wait until they return to their work?

Mr. Miles: The situation is, a part of it is being continued and has never stopped and a part of it will have to await their return.

The Commissioner: After their return, how soon after that will you be able to have the men here with the exhibits?

Mr. Miles: Your Honor, before I answer that question may I check my own impressions with Mr. Seelye's?

The Commissioner: Yes.

Mr. Miles: Your Honor, I asked Mr. Seelye and he confirms what was my own opinion, that we could go forward with this case probably two weeks from today and be ready to make progress.

By the Commissioner:

Q. Do I understand by that you will be ready in two weeks from today to go ahead and present testimony for three days in that week?

Mr. Miles: Yes, sir.

Mr. Miller: Mr. Commissioner, that would be the 10th of February and the 12th, of course, is Lincoln's Birthday.

*Colloquy*

The Commissioner: The 12th is on a Friday.

Mr. Miller: Yes; on a Friday so that we would have only two days if we started on the 10th. I was going to suggest that we start on the 17th.

Mr. Miles: Mr. Commissioner, as far as I can now judge, I think we can continue as rapidly—

The Commissioner: You think, with certainty—subject of course to any further illness—that you could go ahead for two or three days on the 17th?

Mr. Miles: I have no doubt that is a fair statement, Mr. Commissioner.

The Commissioner: I think I ought to say first of all—I do not want what I am about to say to indicate the slightest doubt of what you have said, Mr. Miles, I believe it implicitly—but there is a peculiar combination of circumstances in this case.

I asked counsel at the last hearing, which was in December—December 9th, I believe—when it was apparent that the company was not ready to go ahead at that time, when the company would be ready with its case and I was told on January 15th, and that is stated on the record. The case was then set for the 20th, giving you practically a week. A postponement was then asked and properly so because it had happened that we had overlooked for the moment, in setting down the 20th, that it was Inauguration Day in Washington. It was then set for the 27th, and then a postponement was asked for reasons we will not go into now—changes in counsel and all that, and because of counsel's previous engagements, which of course was true as to the previous engagements, but I thought that we should go ahead because I did not want anybody to get the impression that the Commission was being dilatory in this matter. Now, while I recognize fully the physical circumstances that

*Colloquy*

control in the matter, being something that no human being anticipates, I am entirely agreeable to have a continuation until then but only on account of the circumstances, which cannot be overcome by either side, and for that reason, instead of having Mr. Seelye testify to a round figure, we will delay the testimony until the other witnesses are ready. Do you object to that?

Mr. Miller: I have no objection to Mr. Seelye testifying to a figure if he has it. In other words, if Mr. Seelye is going to state a figure that would be inconsistent with a later figure, I don't think there's much use of placing that figure on the record. However, if Mr. Seelye is willing to state a figure from the inventory of the Edison Light & Power Company, as produced, and he merely proposes to state that figure and to support it, I see no reason why he should not state the figure at this time.

The Commissioner: Mr. Miller, Mr. Seelye is not prepared to offer any exhibits at this time. I think in fairness to Mr. Seelye, in view of the interruptions in the groundwork on which this figure is going to be based, the sickness of the principal agents of Day & Zimmermann who are constructing these projects, I think it would be fair all around to have the matter stop here. It will be of no use to the Commission to have that figure unless testimony is produced as to how it is arrived at at the same time. A figure means absolutely nothing as far as we are concerned, because we can't check it or do anything about it.

(Discussion off the record.)

Mr. Miller: We would not be able to cross-examine today, Mr. Commissioner.

The Commissioner: Of course you would not, there

*Colloquy*

being nothing available to cross-examine on. I think under all the circumstances this hearing had better be continued at this point. I do want to say, however, that the Commission has the duty to press this matter with the greatest expedition possible in view of the delays that have already occurred, for which I am not blaming anyone. I do hope that when we start again, on the 17th of February, the company will be in a position to proceed and finish insofar as the number of hours allotted for hearing will allow the presentation of its case in chief.

Mr. Miles: I can only say, your Honor, that we will use every human effort to accomplish that purpose.

The Commissioner: Unless sickness should occur or something not foreseen, I shall expect the company to proceed. In other words, normal circumstances will not be allowed to stand in the way and I take it that you will be ready to proceed on that basis.

Mr. Miles: Yes, sir.

(Next hearings scheduled for February 17, 18 and 19, 1937, starting at 9:30 o'clock a.m.)

*Colloquy*

Wednesday, February 17, 1937.

Further hearing was held in above matter before the Public Service Commission, Commissioner Stahlnecker presiding, at the office of the Commission, Harrisburg, Pa., on above date, beginning at 9:30 a.m.

PRESENT:

S. G. MILLER, Esq. (Harrisburg, Pa.), for complainant;  
V. K. KEESEY (York, Pa.);

CLARENCE W. MILES, Esq. (Baltimore, Maryland);

DAVID I. McCAHILL, Esq. (Pittsburgh, Pa.), for respondent.

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EVIDENCE IN BEHALF OF RESPONDENT.

Mr. Miles: It seems to the respondent proper, with the Commission's permission, that we make a statement at this time of the approach which we propose to take in this case and the scope and nature of the evidence that we will offer.

It seems to us obvious that in expressing the conception of the respondent to these proceedings, any such conception must be first predicated and conditioned upon the public obligations of the Company. For this reason, I would like to call to your Honor's attention at the outset very briefly the conditions under which the Edison Light and Power Company is now operating, and its inter corporate relations. Your Honor will recall that the respondent is engaged in the electric business in the City of York; that all of its capital stock is owned by the York Railways Company, which Company renders a transportation service to the people of York; that railways company also owns the stock of the York Bus Company, a collateral, so to speak, transportation company, serving the same community. The railways company finally owns the stock



*Colloquy*

of the York Steam Heating Company. Therefore we have a picture where there are four affiliates, each holding a certificate of public welfare and convenience, which indicates that they are rendering an essential public service to the people of York and environs.

Those four companies, if your Honor please, are commonly officered; they are commonly controlled and managed; the principal executive officers of each one are substantially the principal officers of the others, and the Boards of Directors are largely interlocking.

The stock of the respondent, owned by the Railways Company, along with the stock of the Steam Heating Company and certain other obligations of the subsidiaries of the Railways Company, have been pledged by the Railways Company under a certain trust indenture or mortgage constituting part security for some six million dollars of bonds that are now outstanding by the York Railways Company, and which mature on or about December 2nd of this year. So that they are in every sense of the word tied together; their interests are common. The success of one very materially affects, not only the financial success of the other, but the ability of the other to continue the rendition of its particular public service. Each of those four companies, we think, your Honor, we can very readily establish is of definite benefit to the others, as well as rendering a necessary public service. We think we can establish to the Commission's satisfaction and have exhibits to that effect, that the electric company sells steam to the steam heating company at a compensatory rate, that it sells energy to the railways company at a compensatory rate; that the mere fact that these companies are manned, so to speak, by the same individuals, enables each of them to operate at a sum substantially less than they could operate if each one was divested from the other and compelled to maintain its

*Colloquy*

own separate staff. There are various other facts in this connection, by virtue of the relation of one company to the other, which will come out in the evidence.

Our conception of this case, if your Honor please, is that the public policy, the sound public policy, justifies the continuance of the services rendered by those four affiliated companies. We say that is a sound public policy because not only are those services essential to the people of York but also because of the fact that each of those companies contributes a benefit to the other and tends to permit the other to operate at less expense and hence more profitably than would be the case if there was some definite line of demarcation between the four companies. Hence we propose to argue in these proceedings as earnestly as we can, we think there is ample legal authority for the proposition that under the peculiar facts that exist in this case that this respondent is entitled to a rate of return that will not impose any burden upon the electric consumers of the Company, but will, on the other hand, tend to permit these four companies to continue to render their respective services to the benefit of each other, and what is more important, to the benefit of the public that they now serve. If I may make myself perfectly clear, it is of course not suggested by the respondent that the rate base of respondent should include anything other than property used and useful by it in the rendition of that electric service. But we do submit, when the time comes to apply a rate of return to that rate base, consideration should be given to these factors which I have mentioned, and what is equally important, and which I emphasize with all the vigor I can command, consideration should be given in fixing a rate of return to what may happen to these other services if the Commission were to confine itself to the opinion it has expressed in a resolution granted sometime ago with respect to a six per cent. rate.

The Commissioner: I do not want to interrupt your state-

*Colloquy*

ment, but assuming that six per cent. was a proper allowable return for an electric company solely operating an electric property and not being tied up with other affiliated companies such as these, if that were a correct return for that company, is it your position here that because of the peculiar circumstances surrounding this case, because of the tie-up between the companies and the services which they are rendering, which are all intermingled, you feel in this particular situation that the Commission should allow the Edison Light and Power Company to earn a larger return than the return which would be allowed for a Company operating solely an electric property?

Mr. Miles: That is a perfectly fair position to state but with only one qualification, further assuming that the rates which the respondent proposes and has in the past proposed, and which we desire to go into at the proper time, assuming that the rates of the respondent are rates which are reasonable by comparison with other rates, and which do not constitute any burden upon the electric consumers in that particular community. We expect to show you that the rates of this respondent, which it is proposing to this Commission, still constitute the lowest rates in Eastern Pennsylvania.

The Commissioner: Speaking for myself, I do not think that the rates of any Company, whether they are the highest or lowest in Pennsylvania, are the factors that we must finally consider. The factor that we must consider, even if they are low, is whether the Company is earning an improperly high amount of revenue, based on its return. If they are too high, if they are earning more than a proper return, they should be still lower.

Mr. Miles: We think that such a comparison is entirely relevant only for the purpose of testing the question as to whether the electric consumer is being subjected to any undue burden, in connection with the fixing of the rate of return for the electric company, tied in with these other three affiliates.

*Colloquy*

The only reason I have taken up this time is because I think it might be helpful when we present our witnesses, and your Honor might have in mind the objective, frankly speaking, which we are seeking in this case.

The Commissioner: In order to get the matter entirely clear in my mind, you do not propose to contend that the property of the affiliates, of the interlocking companies with the Edison Light and Power Company should be included in the rate base?

Mr. Miles: Not at all.

The Commissioner: Your position is that the property included in the rate base should be only the property that is used and useful and owned by the Edison Light and Power Company, but that because of the circumstances which you have outlined in regard to the relationships of each company, one to the other, and in regard to the services rendered by the companies, that the Commission should give consideration to a larger rate of return for that Company than if those peculiar circumstances did not surround this Company.

Mr. Miles: Yes, sir. We have had the benefit of the services of the firm of Day & Zimmerman and have had appraisals made of the reproduction cost of this Company's properties, the original cost; we have had analyses made of the revenue and expenses of the Company; we have had considerable separate study made of the generating facilities and the part that they play in the rendition of the service and the business of the electric company, and the incidental parts that these facilities play in the business of the steam heating company.

In the presentation of the case your Honor will recall that at the last hearing Mr. Seelye explained that different members of the organization of Day & Zimmerman had been responsible for different parts of their investigation of this case. So, in connection with the reproduction of cost estimate, which is the second exhibit which we propose to offer, there

*Colloquy*

will be four or five witnesses called. The same policy, the same program, will be followed in connection with the presentation of evidence relating to original costs. The same group of men are responsible for both studies. Mr. Katz of the organization will supply certain testimony with respect to the accounting phases; Mr. John Ink will supply certain testimony with respect to the generating facilities, and there will be testimony with respect to the plan of the York Railways Company for the continuance of the road. In other words, we feel charged upon as a part of our conception of this case, to set forth plainly what the Company has in mind with respect to the continuance of that railway and its plan of refunding six million dollars of bonds which I have mentioned, maturing the latter part of this year. Obviously, if the Commission is to give any consideration to the affiliations between these companies and the continuance of their respective services, it necessarily becomes their duty to disclose to the Commission the plan we have in mind whereby those services could be continued, if the Commission saw fit to agree with our conception of the case. That is, substantially speaking, the method of approach of the respondent to its obligations in this hearing.

Mr. Miller: I have no objection to Mr. Miles outlining the manner in which he proposes to present his testimony from his point of view, but I do object very strongly to any testimony as to the interlocking relationships of these companies. It seems to me what we are trying here is an electric rate case, and the basic data to be presented in an electric rate case to determine the proper rate for an electric company, are data relating to the property of that Company and the operating expenses of that Company and the revenue derived by that Company from its consumers.

The Commissioner: We can meet these respective questions when we come to them. What we want first in this matter

*Harry A. Reed—For Respondent—Direct.*

is information as to your estimate of value of the electric property.

Mr. Miles: I might say that by far the greatest part of the time and energy which we will consume will relate to the Edison Company and we will only inject into the record such other data as we think the Commission should have.

The Commissioner: Let us have the electric company data first.

Mr. Miller: Would you mind stating the rate of return that you think should be applied?

Mr. Miles: Our opinion is that the rate base of the Edison Company is between five and six million dollars, and that the rate of return should be not less than seven and one-half per cent.

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HARRY A. REED having been duly sworn was examined and testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Reed, would you please state your full name and occupation? A. Harry A. Reed, engineer employed by Day & Zimmerman, Inc. of Philadelphia.

Q. Will you state what has been your experience in connection with the making of reports and appraisals for various corporations, as well as your experience in engineering and construction matters? A. From 1934 to date I have been employed as an engineer of reports and appraisals for Day & Zimmerman, Inc., specifically relating to the following companies: Philadelphia Electric Company, Commonwealth Edison Company of Chicago, Syracuse Lighting Company of Syracuse, New York, Power Corporation of New York, Mid-



*Harry A. Reed—For Respondent—Direct*

land United Company, Midland Utilities Company, Pacific Gas and Electric Company, and at present the Edison Light and Power Company of York, Pennsylvania. With these foregoing companies I have been engaged either as an assistant or in principal charge of the engineering features involved in the rates that were being made. Prior to 1934 I was vice-president and general manager of the William McClelland Company, Lim. of Montreal, Canada, an engineering construction company. For the period from 1920 to 1930 I was manager of the South America office of Stone & Webster Engineering Corporation in Buenos Aires, Argentina Republic. During that period I had charge of negotiating contracts for engineering and construction work, as applied to the construction of office buildings, industrial plants and steam railroads. For the period from 1918 to 1920 I was assistant to the vice-president of Stone & Webster Engineering Corporation in New York, responsible for new business and solicitation, reports on new projects and the negotiating of contracts for construction work. In 1917 and 1918 I was assistant to the vice-president of Stone & Webster, in charge of construction, assigned to the construction of the ordinance bus depot for the American Expeditionary Forces in France, as a part of my Company's obligations on that work. We were also employed in a consulting and supervisory capacity for the technical advisory Board of the American Expeditionary forces on all power requirements. It was my own responsibility to investigate the sources of power, report on the necessity for the expansion of existing plants, organizing the work necessary for the purchase of all equipment and placing it in operation to meet the requirements of the Army.

Mr. Miller: Mr. Commissioner, we are prepared to admit Mr. Reed's qualifications.

*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q. Just one more observation, and we will finish his resume of experience— A. For the period of 1912 to 1917 I was resident engineer and superintendent of construction, employed by the Stone & Webster Engineering Corporation, either as assistant or in charge of the construction of numerous steam electric generating stations, sub-stations, industrial plants and electric railways.

Q. Have you previously had occasion from time to time to testify in rate proceedings before State Regulatory bodies? A. I have so testified on two occasions, the first instance being the Illinois Commerce Commission in a rate proceeding involving the Commonwealth Edison Company of Chicago. I also testified before the Public Service Commission of the State of New York in a rate case proceeding against the Syracuse Lighting Company, which case is still continuing.

Q. As part of your work as a member of the staff of Day & Zimmerman in this case, have you had occasion to prepare a charge portraying the capitalization and corporate history of various companies, whose properties or securities have been acquired by the respondent or its affiliates? A. Yes, sir.

Q. I hand you herewith a photostatic chart entitled "Capitalization Chart of York Railways Company, subsidiary and predecessor companies" and ask you whether that is the chart to which you have just referred? A. It is.

Mr. Miles: I ask that this chart be marked as respondent's exhibit No. 1.

(Chart in question so marked by the stenographer.)

By Mr. Miles:

Q. Mr. Reed, will you explain to the Commission the general plan or thought that has been followed in connection with the preparation of this chart? A. We have attempted in this chart to show the various companies that are predecessor com-

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panies to the present operating companies, and by line indication to show the way in which mergers and consolidations, as well as the purchase of properties, have taken place. You will note under the word "Legend" at the top that the solid line indicates the acquisition of plant and property through purchase and/or merger.

Q. The solid white line? A. Yes, sir; the dotted white line indicates the acquisition of stocks, bonds and other obligations through purchase and/or merger. The yellow lines indicate the connections between the York Railways Company and the three affiliate companies, the Edison Light and Power Company being No. 2, the York Steam Heating Company and the York Bus Company, all of which are presently operating companies.

By the Commissioner:

Q. Why do you call the Edison Light and Power Company No. 2? A. The Edison Light and Power Company is indicated as No. 2 to distinguish it from the Edison Light and Power Company which resulted from a merger which took place in 1913. There were two mergers, one in 1913 and the other in 1916, in which the name of the company was not changed, but in order to clarify the merger proceedings we have indicated No. 1 and No. 2 for clarification purposes only.

By Mr. Miles:

Q. As I understand your statement, the present Edison Light and Power Company, the respondent in this case, the York Railways Company, the York Bus Company and the York Steam Heating Company are indicated within the confines of these yellow blocks? A. Yes, sir.

Q. The solid white line shows the manner in which the respondent acquired the properties and plants of its predecessors through either purchase or merger? A. That is correct.

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Q. The dotted white line indicates how the respondent acquired its predecessor companies through purchase of stocks, bonds or other outstanding obligations? A. Yes, sir.

Q. And the solid yellow line shows the tie-in between the respondent, the York Steam Heating Company, the York Bus Company and the York Railways Company? A. Yes, sir.

Q. Will you explain why, because it may seem confusing without such explanation, why a dotted white line appears as the connecting link between the York Bus Company and York Railways Company? A. Perhaps we should have used both lines. I think that is an oversight in the hasty preparation of the exhibit. The dotted line should indicate the ownership of the stock of the York Bus Company, and to carry out the concept of the chart there also should be a solid white line.

Q. Will you state the source from which you have drawn the information which is disclosed on this chart and to which you will refer in your testimony with respect to this exhibit? A. This information was obtained from the minute books of the various companies indicated on this chart, and as a result of consultation with officers of the Company, who have been in the employ of the Edison Company or the York Railways Company for a good many years, and who are familiar with some of the details which were not particularly clear when I referred to the minute books. We have also used copies of agreements, proposals and other relevant data that we could find in the Company's files to aid us in putting this information in the proper form.

Q. But in substance the information upon which you have drawn is all disclosed among the records, the accumulated records and minute books of the various companies? A. Yes, sir, that is correct.

Q. Will you refer to the various companies mentioned on the chart, whose properties or securities were acquired by the respondent, and explain briefly to the Commission in what form

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the predecessor companies of the respondent were acquired by it, that is to say, the group of companies appearing in what might be described as the lower right hand corner of this chart, or those immediately beneath—A. I will start that explanation by referring to the Edison Electric Light Company of York, Pennsylvania. The Edison Electric Light Company of York, Pennsylvania was the first of the electric companies to be started in the City of York. It was organized originally in 1885, and after certain changes received its present letters patent on August 13, 1889. The actual start of the Company was in 1885, when capital was raised and the construction of a steam electric power station was initiated at the site of the present steam generating station of the Pershing Company.

Q. That was the real beginning, so to speak, of the rendition of any electric service in York? A. That is correct, that is to say, that during the time of the construction of its station, when it was under way, the Company did have quarters installed in rented property that was of a temporary nature only, and the real start in our situation was with the construction of the forerunner of what is now the main central generating plant.

Q. That is the construction which you started in 1885? A. Yes, sir; the start of this Company inspired others to start in this field, and shortly thereafter the Peoples Light and Power Company of York, Pennsylvania was organized under the laws of West Virginia. It later gave up its Virginia charter and was granted letters patent in Pennsylvania in 1886. This Company was organized primarily for the purpose of engaging in street lighting and a plant was constructed adjacent to the site of the present Edison Generating station. When the City of York was incorporated in 1887 Council asked for bids for street lighting, and both the Edison Lighting Company and the Peoples Electric Light Company submitted bids. The Edison Company was successful in this negotiation and expanded their

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plant as a result of that new contract. The Peoples Company, as a result of losing out in the competition, made arrangements to sell all of their plant and property to the Edison Lighting Company of York.

Q. You mean to the Edison Electric Light Company of York? A. To the Edison Electric Light Company of York, yes, sir.

Q. That sale was consummated? A. Yes, sir, on February 8, 1894. In the meantime another group of citizens had become interested in the Westinghouse system of generation and they organized what was known as the Westinghouse Electric Light Heat and Power Company, which received its letters patent in October 1892. This Company built a plant for supplying alternating current, the Edison Company confining its service to direct current at that time. Carrying on in chronological order, in May, 1899, the York Light Heat and Power Company was incorporated under the laws of New Jersey with a capital stock of 35,000 shares of a par value of \$10 each. After its first meeting a gentleman who claimed to own eighteen thousand one hundred and sixty-nine shares of stock of the Edison Electric Light Company of York and two thousand five hundred and sixty-five shares of the capital stock of the Westinghouse Light Heat and Power Company of York, offered to exchange his holdings for the common stock of the York Light Heat and Power Company. The directors of the Company approved this offer and we thus have the first instance of a control of competing electric companies coming under a single management in this territory.

Q. I do not want to prevent you from commenting on anything that is helpful but we want to get along as quickly as possible, so, won't you go into the other companies that eventually formed a part and became a constituent part of the present respondent? A. There is one other electric company in this general territory known as the Red Lion Electric Light



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Company, which was granted letters patent in 1890. This was a small property, and in 1905 this Company, together with three so-called franchise companies, were merged and consolidated to form the York and Windsor Electric Light Company. The York and Windsor Electric Light Company, together with the Edison Electric Light Company of York and fourteen franchise companies, were merged and consolidated under an agreement dated May 8, 1913, into what is now known or was at that time known as the Edison Light and Power Company, which we refer to as No. 1. In 1901 the Merchants Electric Light, Heat and Power Company was granted letters patent to engage in furnishing electric power and electric service in general in the City of York. This Company built a plant, and while it was engaged in service in York it was hardly competition because they in fact served separate territories from those in which the old Edison Electric Light Company was located. In 1915 a merger took place, in which the plant and the property of the Edison Light and Power Company, No. 1, the Merchants Electric Light, Heat and Power Company, and a group of franchise companies, indicated on the chart, were all merged and consolidated to form the present Edison Light and Power Company, which we refer to as No. 2.

Q. The date of the consolidation, whereby a number of constituent companies became the respondent in this case, was June 26, 1915? A. Yes, sir; subsequent to that time the Edison Light and Power Company, No. 2, acquired the plant and the property of a number of franchise companies, as shown in the block on the sheet. I think there are seven franchise companies. They came in after the merger of 1915—

By the Commissioner:

Q. That is the block furthest to the left? A. Yes, sir, under the Wrightsville block.

*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q. There is one question I want to ask you, about one of the earlier companies, that is the Red Lion Electric Light Company. During the course of your investigation did you obtain any information as to the price of the plant and the property of that Company at or about the time of its merger with the York and Windsor Electric Light Company on March 15, 1905? A. There was a steam generating station in Red Lion and a distribution system in the immediate territory. That constituted the plant and the property of the Red Lion Electric Company, as disclosed by the minutes.

Q. The Company owned, as I understand you, among other things, a generating plant? A. Yes, sir.

Q. Do you have any information as to the character and capacity of that plant? A. I do not think I have any exact information—

Q. All right. Mr. Reed, having covered briefly the history of the acquisition by the respondent of its predecessor companies, will you now be good enough to state what your investigation disclosed with respect to the circumstances surrounding the organization and the beginning of business by the York Steam Heating Company in 1898?

Mr. Miller: Mr. Commissioner, I see no reason for going into the history of the York Steam Heating Company. The respondent company and its predecessor companies would seem to be the only ones involved in this proceeding, and I object to the testimony of the York Steam Heating Company as being irrelevant.

Mr. Miles: The purpose of the question is two-fold, the first, as we have previously stated, we think the Commissioner should consider these companies together in the consideration of the rate of return to be allowed, but more important at this particular time, as relates

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to the York Steam Heating Company, and the real purpose of the question is to refute testimony offered by the Commission as to the use of the central generating plant, the fact that it is not properly a part of the rate base of the respondent company. We want to be able to show in connection with our whole presentation the question of the use of the generating facilities, and we want now to be able to show the known purposes that caused the construction of the generating facilities, the use to which it was put, from its beginning, to be followed up later on by testimony as to its present use to the respondent.

The Commissioner: In the testimony presented by the Commission there was considerable testimony with relation to the York Steam Heating Company.

Mr. Miller: Yes, sir, but nothing as to its corporate history.

The Commissioner: You have no objection to an analysis as to the merger and consolidation which brought about the present electric company?

Mr. Miller: No, sir.

The Witness: The York Steam Heating Company obtained its letters patent in April of 1898. It was organized by a group who were mostly directors of the Edison Electric Light Company of York, Pennsylvania. According to the minute books the president of the American District Steam Heating Company had tried to interest the directors in the opportunities offered to engage in the steamheating business for commercial and residential customers. As a result of a study that had been made by that Company, the District Steam Heating Company, it was presented to the Board of the Edison Electric Light Company that they could obtain a very promising return on any investment that would be

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required to build a steam distribution system in the central part of the City of New York, the steam which this business would require being exhaust steam from the engines in the central plant, which up to that time had not been utilized. As far as I can find from both the minutes and by talks with various officers from the Company, the early installations in the central generating plant did not have condensers, and therefore the Company in its generation of electricity was not utilizing to its full economic advantage the steam which passed through the engines.

By the Commissioner:

Q. What Company are you talking about? A. I am referring now to the Edison Electric Light Company, whose directors were responsible for forming the York Steam Heating Company.

Mr. Miles: He said that a group of directors who controlled the York Electric Light Company were responsible for the organization of the York Steam Heat Company.

The Witness: The York Steam Heating Company was organized with a capital of one hundred shares of common stock, of ten dollars par value, all paid in. The first construction that was engaged in for the distribution of steam lines was the result of a contract between the Edison Electric Light Company of York and the American District Steam Heating Company. In other words, the Edison Company put up the money for the construction of the distribution mains, under which the York Steam Heating Company rendered steam heat service to the central section of the City of York.

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By Mr. Miles:

Q. May I inquire at this time for the purpose of clarifying the record, as I understand it, the York Steam Heating Company was sponsored and organized by a group who comprised the Board of the then Edison Electric Light Company of York, Pennsylvania? A. Yes, sir.

Q. That group organized the York Steam Heating Company for the purpose of utilizing the steam? A. Yes, sir.

Q. Incident to the operation of the generating facilities forming a part of the property of the then Edison Electric Light Company? A. Yes, sir.

Q. Which was waste heat in the steam exhaust? A. Yes, sir, up to that time.

By the Commissioner:

Q. Who furnished the capital for the York Steam Heat Company? A. The capital was subscribed by the directors.

Q. Not by the Edison Company? A. The capital of one thousand dollars was subscribed by the directors as individuals.

Q. And not as official representatives of the Edison Company? A. No, sir.

Q. And not with Edison Company money? A. As far as the capital stock was concerned, it was subscribed as individuals.

Q. Who put up the money for the construction of the plant? A. The plant which really was comprised of underground lines was all paid for by the Edison Electric Light Company of York. That situation continued from 1898 to 1921.

By Mr. Miles:

Q. Where did the earnings from the York Steam Heat Company go after its organization, if any? A. The earnings went to the Edison Electric Light Company.

Q. It was the concern which benefited from the organiza-

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tion of the Company,—the Edison Electric Light Company?

A. Yes, sir.

By the Commissioner:

Q. Did they earn any money? A. There was a number of instances where the Board declared a dividend.

Q. I asked you whether they earned any money? A. Some years I believe they did. I personally did not make a careful analysis of the yearly operating costs as I was interested primarily in the corporate development.

By Mr. Miles:

Q. Did your investigation indicate the exact date when the construction or installation of the central generating plant now owned by the respondent was actually commenced? A. The exact date?

Q. I mean the year? A. It started in the latter part of 1885, which was some twelve years prior to the organization of this York Steam Heating Company.

Q. And the construction of those facilities was commenced by the Edison Electric Light Company of York, one of the predecessors of the present respondent? A. That is correct.

Q. While we happen to be on the subject of the generating plant and its history as relates to these various companies, will you be good enough to tell us what you know with respect to the dates of installation of the various boilers and other units of property comprising the generating plant? A. At the end of 1886, according to the Company records, the plant equipment comprised four boilers, two thirty kilowatt Edison By-Polar one hundred ten volt generators. They were belt connected to steam engines. Shortly after 1886, a larger unit comprising two 60 K.w. Edison generators belt connected, were installed. Minor changes in equipment, with replacement of some of the older boilers with larger sizes took place. Up to the period of 1898 the Edison Lighting Company's equipment



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comprised boilers, engines without condensers, direct connected to electric generators, solely designed for the purpose of the production of electric energy.

Q. All of this information that you are now testifying to, as I understand it, are matters disclosed among the corporate records of these various companies, supplemented by some information which you have obtained from the employees or officers of the Company, who have been familiar with the matter, since the dates we are talking about? A. That is correct.

Q. In 1921, which is the last date to which you referred to in the installation or construction of the central generating plant, what was done by the York Steam Heating Company or the Edison Company with respect to the right to engage in the steam heating business? A. In 1921, under an agreement between the Edison Light and Power Company, the Department of State in Harrisburg, and the Public Service Commission, the books of the York Steam Heating Company were open to show the capital assets of the steam heating company. The directors of the Edison Light and Power Company realized that they had a very large investment in the distribution system for furnishing steam heat. They had an appraisal made in 1913, which indicated approximately one hundred and ten thousand dollars as the reproduction cost of the system as then existing. Subsequent extensions from 1913 up to 1921 had been made in the distribution system, all paid for by money advanced by the Edison Light and Power Company.

By the Commissioner:

Q. What distribution system, the electric distribution system? A. The steam distribution system. As a result of an agreement between the Public Service Commission and the Edison Company—

Q. An agreement to do what? A. An agreement to place on record in the books of the steam heating company the investment in the distribution lines furnishing steam heat, which up

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to that time had been carried solely on the Edison Light and Power Company's books.

Q. What do you mean by an agreement between the Public Service Commission and the Edison Company? A. As I understand the situation from reading the minutes, the York Steam Heating Company which was granted a franchise to operate a certain steam heat company in York had no evidence of that on its books, as all the money for the building of those lines had been advanced by Edison or its predecessor, the Edison Electric Light Company of York, and was carried on the Edison books. In 1921 the Edison Light and Power Company, realizing the extent of the investment they had in steam heat lines, requested permission to open the books or to enter on the books of the steam heat company recognition of the investment that they had made in steam heat property. That was done. The Edison Light and Power Company received a note of the steam heating company obligating itself to pay or to repay Edison for the investment that Edison had made in these lines, to the amount that was entered on the books, of approximately \$68,000, as of the year 1913.

Q. There was no agreement, they requested permission from the Commission to make certain entries on their books from an accounting viewpoint? A. Yes, sir.

Q. According to your statement the Public Service Commission approved that method of entering those items? A. That is correct.

Mr. Miles: I do not believe that the witness intended to imply that there was an agreement. The Edison Company and its predecessor had advanced money for the construction of this distribution system, and they reflected it on the Edison books. There was nothing on the books of the York Steam Heating Company and they applied to the Commission for permission to enter those

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expenditures on their own books to properly reflect the plant and property account.

The Witness: That is correct.

By Mr. Miles:

Q. The remaining companies other than the York Bus Company, indicated on this chart, that is to say, those at the left hand column constituting the ones with respect to which you have not commented as yet, are simply companies whose properties or securities were ultimately acquired by the York Railway Company? A. Yes, sir, that is correct.

Q. This group of companies are the predecessors in interest from time to time of the York Railway Company, in connection with the rendition of its transportation service? A. Yes, sir.

Q. The Company indicated in the yellow block in the upper left hand corner of the chart represents the York Bus Company? A. That is correct.

Q. That is wholly owned by the York Railways Company? A. Yes, sir.

Q. Substantially all these predecessor companies of the York Railways Company went into the latter by virtue of mergers or consolidations, did they not? A. Yes, sir. There was some of them that went in after the date of the merger and consolidation which formed the York Railways Company.

Q. Just for the purpose of the record, it is a fact, is it not, that the York Railways Company rendered a transportation service in the same community that is served by the respondent in this case? A. It operates an electric street railway.

Q. It operates an electric street railway in the City of York and the suburban service in some of the surrounding territory?

A. The transportation service is supplemented by the Motor Coach, or the Motor Carrier service of the York Bus Company.

Q. In the same community, generally speaking? A. Yes, sir.

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Mr. Miles: At this time we would like to offer in evidence Respondent's Exhibit No. 1, which has been already identified by the witness and marked by the stenographer.

Mr. Miller: I have no objection.

The Commissioner: It will be admitted for the record.

Mr. Miles: That is the end of the direct examination of Mr. Reed on this subject. We might call him back once or twice on other matters.

Mr. Miller: Mr. Commissioner, we would like to defer cross-examination until we have an opportunity to study the exhibit.

The Commissioner: Very well.

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THEODORE E. SEELYE, being recalled, testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Seelye, at the conclusion of the prior hearing I believe you were on the stand and had testified as to your connection with Day & Zimmerman and as to the nature and scope of an investigation being made by Day & Zimmerman of the property, business and affairs of the Edison Company and its affiliates? A: Yes, sir.

Q. You have likewise testified that as a part of your investigation your firm had made an estimate of the reproduction cost, new, reproduction cost new less accrued depreciation, of the properties of the respondent and its affiliates? A: Yes, sir.

Q. I hand you herewith a volume entitled "Report No. 3234" in the cover of Day & Zimmerman, Inc., and ask you whether that is the estimate of reproduction cost new and de-

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preciated of the properties of the respondent and its affiliates, to which you referred? A. Yes, sir.

Mr. Miles: The volume, your Honor, contains an estimate of reproduction cost on the property of the Edison Light and Power Company, which is the first part and the major part of the exhibit, and the second part of the exhibit covers a similar report in less volume and in less detail, with respect to the property of the York Railways Company and the York Steam Heating Company, and about a half a page relating to the reproduction cost of the property of the York Bus Company. I ask that this be marked for identification as Respondent's Exhibit No. 2.

(Exhibit in question so marked.)

By Mr. Miles:

Q. Mr. Seelye, will you explain the general character and scope of this report? A. This report sets forth the reproduction cost estimate of the physical properties, of all of the physical assets of the respondent company and of its affiliates. It includes some property which is not used and useful in the Public Service and we have a separate exhibit for the purpose of eliminating these non-useful properties. These represent all of the assets, the physical assets, of these companies. The report was prepared by taking a physical inventory by count of the units of property and by applying to these units of property prices for labor, construction and materials, to arrive at the total results, as shown on the summaries.

Q. That method of making the inventory was followed with respect to each of the four companies, whose properties are referred to in the volume? A. Yes, sir.

Q. Now, will you state in a general way the method by which the unit costs were gathered? I recognize that your assistants did specific parts of this report but I merely want

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some general testimony from you as to the method followed by Day & Zimmerman in making this report? A. The preparation of this report, in fact the preparation of the reproduction cost estimate, as we conceive it, is really divided into two parts, of the physical cost of the plant, the direct costs which represents costs which would be experienced by a contractor in carrying out the work, and the overhead costs which are specifically what might be incurred by the owners on the property. That division of them is clearly indicated by the uniform classification of accounts and it is based on everyday experience. We prefer to set them up as carefully as we can, with that line of demarcation, because we think it represents a logical way to an intelligent understanding of the development of the construction cost estimate, which the direct costs actually do represent, in our opinion. The method which we follow in pricing the units of property is not unusual to the extent that we obtain the prices of the various materials and equipment, estimate the costs of installation and the labor required to set them into place.

Q. Were there a number of the members of your staff who assisted in the making of this reproduction cost estimate? A. Yes, sir. We have for some time followed in companies that were sufficiently large to justify it,—put in charge of the various groupings of accounts by nature of the work, men who are particularly experienced in that special line, for example, on building construction we use an engineer who is experienced in the construction of buildings. On transmission or distribution lines we use an engineer whose experience has been in the designing or construction of transmission lines and distribution systems, and so on for the generating systems and for the sub-station equipment. We find it not only leads to accuracy but to confidence in the results obtained. This particular work was performed in that connection by Mr. Reed, who also analyzed the construction of the central station and some of the minor counts. He was in general charge of the whole



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work. On the transmission and distribution system the estimates were prepared by Mr. Mitchell, and in the sub-station by Mr. Favor. With respect to steam heat and railway properties the pricing was done by Mr. Bredin.

Q. This entire report was gotten up under your general supervision, was it not? A. Yes, sir.

Q. For the purpose of the record, this volume contains, first, the transmittal letter, in which is contained on the second page the total direct costs and indirect costs, thereby reaching the aggregate reproduction cost new of the properties of each of the four companies mentioned in the report, is that right? A. Yes, sir.

Q. And followed by a similar statement as to the depreciated reproduction cost of the properties of each of the four companies? A. Yes, sir.

Q. The letter or the transmittal to which I have referred in my last question is the letter of transmittal of Day & Zimmerman, addressed to the York Railways Company, is it not? A. Yes, sir.

Q. Why is the letter addressed to the York Railways Company, as distinguished from the respondent? A. Because we were retained by the York Railways Company.

Q. To make this study? A. Yes, sir.

Q. Study of the reproduction cost of the properties of all four of these companies? A. Yes, sir.

Q. So that there may be no misunderstanding, that answer is not intended to carry with it any suggestion that the entire cost of this will be borne by the York Railways Company? A. I do not think so. Our work is in connection with the rate case of the respondent. I do not know how they are going to divide the cost on the Companies' books. I think the senior officer of the group happens to be the president of the York Railways Company, and they asked us to do the job.

Q. Referring to page one of the exhibit, will you state what is intended to be reflected on that sheet? A. On Sheet No. 1

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of Exhibit No. 1, or Respondent's Exhibit No. 2, that shows the estimated cost of reproduction new and less accrued depreciation by accounts, for the property of the Edison Light and Power Company. The total reproduction cost of the physical property, which of course is exclusive of working capital or going concern value, is \$5,694,494.

By the Commissioner:

Q. There are several sheets one. Do you mean the sheet one in the section relating to the Edison Light and Power Company? A. Yes, sir.

Q. Page one of that particular section? A. Yes, sir.

By Mr. Miles:

Q. For the sake of clarity, from there on throughout the balance of the report the pages are consecutively numbered? A. Yes, sir.

Q. You have stated the conclusion reached by Day & Zimmerman as to the reproduction cost new of the property. Will you now state what the conclusion was as to the depreciated reproduction cost of the property of respondent, exclusive of any allowance for going value or working capital? A. The estimated cost, reproduction cost, of the physical property of the Edison Light and Power Company, less accrued depreciation, we found to be \$4,995,406.

Q. The account numbers indicated on page one of the report relating to the Edison Light and Power Company is in accordance with the accounting system of the Pennsylvania Public Service Commission, is it not? A. Yes, sir.

Q. Referring to page two, will you state for the purpose of the record what recapitulation has been made on that sheet as to the reproduction costs of the respondent's properties? A. Page two of that part of the exhibit relating to the Edison Light and Power Company shows by accounts the division of

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the property by political sub-divisions in the territory which it serves.

Q. In other words, there has been allocated to each borough or township that portion of the physical property of the borough that is erected or installed in that particular political subdivision? A. Yes, sir.

Q. The property so allocated to each sub-division has been priced and the prices are shown on this sheet? A. Yes, sir.

Q. Page 2-A is a mere continuation of the same allocation, and page 2-B is likewise? A. Yes, sir.

Q. Beginning at page 3, is the reproduction cost new of the respondent's property for the various units comprising or embraced within the appropriate account numbers? A. Yes, sir.

Q. In connection with the estimates of accrued depreciation which have been applied against the reproduction cost new, does the report attempt to show the depreciation attributable to each unit of the Company, or is the depreciation expressed only in relation to the property embraced within a particular account number? A. As set forth in the report, the depreciation which is shown represents the depreciation, or rather, perhaps more correctly represents the reproduction cost new less accrued depreciation by accounts, not by individual units of property. In the preparation of depreciation studies we are accustomed to consider the property as a utility property, not as a collection of individual units. For that reason, while we too with respect to major units of property develop the accrued depreciation, which in our judgment exists in these units, and a weighted average for the account as a whole, for certain of the accounts we necessarily apply a judgment which affects the entire account. This however we can explain further by saying, with respect, for example, to sub-stations. The sub-station as a whole is taken as a unit, consisting of individual units of property, and the sub-station account, the account for the entire sub-station is depreciated as a unit. That would

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be true of boiler installation. For example, I might say that a boiler might have been in service for some time and it may have a new feed pump, and by the time the boiler is retired from service the new feed pump goes with it, so that there would be no point in applying a weighted average there because when that boiler goes out the pump goes with it, whether it is new or old. We regard that as a unit of property rather than a collection of individual units.

Q. Illustrating your approach with respect to the account involving poles, you have not depreciated each pole in this report but have arrived at an estimate on the group depreciation of all of the poles treated collectively? A. That is correct. It does not follow however that that conclusion is arrived at without a study of the individual units of property, but it is our conception that the utility property is one unit in itself, and it has to function, under the requirement of the law it must continue to function so long as it is maintained in a proper operating condition. From that standpoint it has suffered no depreciation. At the same time property does require renewal and replacement from time to time for various causes. Some of these causes are related to inadequacy. Some of these causes are related to obsolescence, but obsolescence is more difficult to determine because usually when obsolescence occurs it is complete or before it has occurred you do not know that it is there, and when you once know it has occurred it is done. There is however a definite mark of obsolescence which has to be kept in mind in accruing depreciation.

Q. You have stated that Messrs. Reed, Mitchell, Favor and Bredin were primarily responsible for the estimates of the reproduction cost new of the various units of property. Did those same men direct the work incident to the conclusions of Day & Zimmermann with respect to accrued depreciation on those same units? A. Yes, sir.

Q. Who was responsible for the conclusions reached in this

*Theodore E. Seelye—For Respondent—Cross*

report or disclosed in this report, as to the proper allowance for what is commonly known as general overhead? A. I prepared them.

Q. Did you prepare those with respect to the railways company, the steam heating company and the bus company, as well as the respondent? A. Yes, sir.

Q. I believe you have testified that there was nothing included in the estimate of reproduction cost new or depreciated reproduction cost of the property of the respondent, as working capital or going value? A. Yes, sir.

Q. The same is true with respect to the estimates of reproduction cost new and depreciated of the properties of the railways company, the steam heating company and of the bus company? A. Yes, sir.

Q. In the course of the investigation of Day & Zimmermann in this case, I would like to inquire whether you found any instance where property solely dedicated to the use by the electric company is actually owned by the railways company? A. Yes, sir.

Q. Did you find instances where properties built by the railways company at its expense are used exclusively by the electric company? A. Yes, sir.

Q. Did you find instances where properties built by and owned by the railways company are used jointly by it and the respondent? A. Yes, sir.

*Cross Examination.*

By Mr. Miller:

Q. What instance did you find of property paid for by the York Railways Company, used by respondent? A. The transmission lines, the sub-station equipment.

By the Commissioner:

Q. To transmit power to whom? A. To the general public.

*Clarence A. Mitchell—For Respondent—Direct*

By Mr. Miller:

Q. Wouldn't they be distribution lines? A. No, transmission lines.

Q. Do you have tabulations of the lines? A. We have prepared one.

Q. You propose to put in evidence a statement as to that property? A. Yes, sir.

Mr. Miller: That is all I have with this witness at the present time. We would like to defer further cross-examination until later.

The Commissioner: It is understood that any of these witnesses, where the examination is deferred, will be recalled for cross-examination after they complete their testimony.

Mr. Miles: That is agreeable to us. I would like to state that I understand that there are one or two days when Mr. Seelye will be required to appear before the New York Commission in Syracuse.

The Commissioner: Of course anything of that sort will be adjusted to the convenience of the witness.

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CLARENCE A. MITCHELL having been duly sworn was examined and testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Mitchell what is your full name and occupation? A. Clarence A. Mitchell, employed by Day & Zimmerman Inc., as appraisal engineer.

Q. Will you state what your education in engineering is? A. I was graduated in electrical engineering from Vanderbilt University in the Class of 1919.



*Clarence A. Mitchell—For Respondent—Direct.*

Q. Will you state what has been your experience in connection with the construction of public utility properties and your general engineering experience, with particular reference to electrical transmission and distribution properties? A. After graduating in 1919 I accepted a position with Dwight P. Robinson & Company as general foreman in charge of steel tower and wood pole line construction for the Duquesne Light Company of Pittsburgh, the first project consisting of approximately two hundred circuit miles of sixty-six k v steel tower lines from Colfax to Woodville. My duties on this project consisted of supervision over the clearing of the right of way, excavation, erection of towers, constructing condensers. In connection with this line I also had charge of constructing an outdoor sub-station at Dravosburg and Wilmerding. After this project I constructed a fifteen mile twenty-two k v wood pole line from Pine Creek sub-station to Verona, Pennsylvania, also a twenty mile twenty-two k v wood pole line from Pine Creek to East End sub-station. Upon completion of this line I constructed a thirty mile twenty-two k v of wood pole line from Ambridge to Rochester, Pennsylvania. This line included eight special steel towers for river crossing purposes, across the Ohio River.

By the Commissioner:

Q. Is it still standing? A. Yes, sir, as far as I know. During this period I also constructed several special river crossing towers over the Monongahela River and the Allegheny River in Pittsburgh. After completing the transmission line projects I had charge of constructing a distribution sub-station, outdoor switching structure, at Wilksburg, Pennsylvania, and several steel structure switching equipment, located on Brunots Island.

By Mr. Miles:

Q. What you have stated up to this time, as I understand it, relates to certain projects on which you have worked prior to your association with Day & Zimmerman? A. Yes, sir.

*Clarence A. Mitchell—For Respondent—Direct*

Q. I would like to get to the point where you became associated with Day & Zimmerman, and have a brief resume of your activities since your association with that firm? A. You mean Day & Zimmerman, Inc.?

Q. Yes; Day & Zimmerman Construction Company? A. In 1923 I was employed by Day & Zimmerman Engineering and Construction Company as superintendent in charge of steel tower and wood pole line construction for the Penn Central Light and Power Company, the first project consisting of approximately one hundred circuit miles of one hundred and ten k v steel tower line from Saxton to Lewistown, Pennsylvania. After completion of this project I constructed twenty-five miles of forty-four k v wood pole line from Cresson to Revlock.

Mr. Miller: I am willing to admit the qualifications of the witness.

By Mr. Miles:

Q. There are just one or two things that I want to ask the witness. Have you had any experience in connection with the preparation of inventories or reproduction cost appraisals for use before State regulatory bodies? A. Yes, sir, I have had experience in making inventories and reproduction cost estimates in connection with the Public Service Corporation of New Jersey and the Connecticut Light and Power Company, and more recently the Syracuse Lighting Company. In this case I inventoried the property and made the estimates for the reproduction cost estimates.

Q. You have testified, I believe, in rate matters and valuation proceedings? A. For the Syracuse Lighting Company I testified for all of the distribution and transmission companies.

Q. Before the New York Public Service Commission? A. Yes, sir.

Q. Is it a fair statement to say that since 1920 the greater

*Clarence A. Mitchell—For Respondent—Direct*

part of your time has been continuously devoted to matters relating to the construction of electric properties, particularly transmission and distribution, and the making of cost studies with respect to the same? A. Yes, sir.

Q. Referring to the work sheets or notes, Mr. Mitchell, I would like to inquire whether you supervised the estimates of reproduction cost, as shown in Respondent's Exhibit No. 2 for the units of property embraced within account numbers 239, 242, 243, 244, 245, 246, 254, 257, 258, 259, 260, 262, 266, 267 and 278? A. Yes, sir, and in addition to that I believe you omitted account 256, poles and fixtures.

Q. That is right. I thank you. With the addition that you have made, to the account numbers I have referred to include all of those with respect to which you have been concerned in this case? A. Yes, sir.

Q. Will you refer to account number 256, which is shown on page 125 of Respondent's Exhibit No. 2? A. Yes, sir.

Q. It relates to poles and fixtures of the distribution system of respondent? A. Yes, sir.

Q. Will you explain in your own way Mr. Mitchell how you obtain your prices for material and labor that make up the aggregate unit costs indicates on those pages? A. We will begin by taking for example the unit price for a thirty-five foot Western red cedar pole. After the inventory was completed, I sent letters to several of the Western red cedar pole concerns, I believe there were four of them, and asked for quotations, competitive prices for thirty-five and forty and various sizes of Western red cedar poles, with the specification half inch, Pentrex treatment, and asked for quotations delivered to York, Pennsylvania in carload lots. We secured, as I say, four of these letters, and I selected the quotation which was the lowest from the concern which happened to be in this case the Carney Pole Company. They submitted the lowest unit price and so I used them for the material price—

*Clarence A. Mitchell—For Respondent—Direct*

Q. Right at that point, you say you asked for four bids of manufacturers of poles? A. Yes, sir.

Q. You selected as the adoption of your base material price the lowest of the four bids that you received? A. Yes, sir.

Q. Which bids were quoted on prices with the delivery of the poles to York, Pennsylvania? A. Yes, sir.

Q. Let me ask you Mr. Mitchell whether in connection with your experience to which you have referred, you have had personal connection from time to time or have had personal occasion from time to time to purchase poles in large quantities? A. Yes, sir, a great many times.

Q. You therefore were in a position to form an independent judgment as to the reasonableness of the quotations submitted to you by the manufacturers? A. Yes, sir. I a very familiar with current quotations.

Q. You keep yourself posted as to the current prices of poles and other equipment represented within this account number? A. Yes, sir.

Q. Would you say that the quotations that you received from these four manufacturers were quotations that they would have rendered to a party or some prospective purchaser? A. Yes, sir, I think they were competitive prices, and I would expect to receive the same offer or quotation if I had been purchasing a carload of those poles.

Q. Are you familiar with the prices paid from time to time in recent months by the Edison Light and Power Company for the purchase of poles? A. Yes, sir.

Q. Would you say that the quotations that you received from those manufacturers were supported by quotations or supported by prices paid by the respondent? A. Yes, sir, they were comparable to the prices.

Q. Go ahead, I interrupted you. A. After we had established the unit price for the material for thirty-five foot Western red cedar poles, I then established the labor unit price.

*Clarence A. Mitchell—For Respondent—Direct*

For instance, under labor is unloading and stacking poles, and for this thirty-five foot pole I have estimated a price of twenty-six cents per pole. After the unloading and stacking we have a distribution of the pole in operation, on which we have unit prices. Is it necessary to give the unit prices?

Q. No. A. Then we have a price of digging the poles, setting the poles, and that gives the total labor unit for a thirty-five foot pole in place. Then we have equipment costs, equipment used in unloading and stacking the poles.

Q. Pardon me, before we get to the equipment costs, I assume in your supervision of labor costs you used the hourly rate prevailing in the City of York, and if not, what was the basis for the unit costs that you applied to labor? A. I established the labor rate base on my experience in doing construction work on a large scale basis, that we would have to pay to bring men in for this class of work. It has been my experience in all this kind of work that always invariably we have to pay more money for our line men and ground men than the utility is actually paying on an hourly rate. Our hourly rate is sometimes as much as sixteen to twenty cents an hour greater, from my experience.

By the Commissioner:

Q. Whose hourly rate? A. In this estimate.

Q. The estimate you put in here? A. Yes, sir; it does not necessarily represent the rate paid by the Edison Light and Power Company.

Q. Why not? A. Because it has been my experience we are never able to secure men at this low hourly rate because we do not give the men the advantages that the local utilities do. They are hired by the year, they are paid on regular days and they get other compensation, while our men working on a temporary project two months at a time, are only paid for the hours that they put in, and we have to pay a higher rate than the steady workers receive.

*Clarence A. Mitchell—For Respondent—Direct*

By Mr. Miles:

Q. Have you any judgment as to whether there would be sufficient labor available in York to construct a project of this size? A. No, sir, there would not be sufficient line men in York to reconstruct this entire property.

Q. And the labor that you have assumed would be necessary to import to build these lines, is that the type of labor that would construct lines with a higher degree of efficiency and in less time than the labor available in York? A. We would not have experienced line men in York and we would have to import our labor.

Q. Go ahead with your equipment costs. A. We have set up equipment costs for unloading and stacking poles, equipment costs for distribution of poles, equipment costs for digging holes and setting the poles.

By the Commissioner:

Q. On page 125 you have four twenty foot chestnut poles at ten dollars a pole, or forty dollars? A. Yes, sir.

Q. What does that ten dollars include? A. That includes material, labor, equipment, direct engineering supervision.

Q. Plus the cost of the pole? A. Yes, sir.

By Mr. Miles:

Q. In other words, to expand a little on the Commission's question, at page 125 there appears in the first item of the sheet four twenty foot cedar poles and the price opposite that is forty-seven dollars. As I understand it, that is intended to be the estimate of Day & Zimmerman of the cost to reproduce new four twenty foot cedar poles, installed in place? A. Yes, sir.

Q. And that amount includes the cost of material, the cost of labor and any other expenses incidental to the installation of the material— A. Yes, sir.



*Clarence A. Mitchell—For Respondent—Direct*

Q. The same is true with respect to each item shown? A. Yes, sir.

Q. Under account 256? A. Yes, sir.

Q. Take account 266 Mr. Mitchell, relating to meters forming a part of the distribution system, and which is referred to on page 214 of Respondent's Exhibit No. 2, and I select that item because it is an appreciable one in the reproduction cost of the property. Will you state the basis of the estimate as to the reproduction cost of the meters, that is to say, from what source you obtained your unit cost of materials and the basis of your allocation of the cost of labor? A. In this account 266 it only includes the cost of the meter, with the cost of freight and store room handling and testing, making out the necessary cards, meter cards, record cards, badging meters. There is no other labor involved except the unit price for the material secured from the General Electric price sheets, and with a discount applied comparable to the discount that the Edison Light and Power receives at the present time.

Q. In other words, you assumed therefore that the cost of materials there is the basis upon which the Edison Light and Power Company could purchase meters in the open market?

A. Yes, sir, the same prices.

Q. What do you say about the installation cost? A. The installation cost is in account 267.

Q. Account 266 embodies only the material? A. Yes, sir, plus testing and badging.

Q. Suppose we go on with account 267 to show how you arrived at the cost incident to the installation of the meters?

A. In this case, the same as we have in all of the other accounts the first thing we do is to establish a typical crew that we will use in the various labor operations. According to my experience I determined the performance that this particular crew would be able to do, and from that I arrive at a unit price, based on the labor rates which we set up. In the case

*Clarence A. Mitchell—For Respondent—Direct*

of installing the meters is a crew established consisting of one foreman, six meter installers, seven second class line men, one truck driver. We have a two and a half ton truck with the crew. This crew will install an average of ninety-six meters per day, that is, taking all of the two wire and three wire combined. That is a unit cost for meter installation of seventy-three cents, including labor, equipment, field office and supervision expense.

Q. From your experience with comparable situations, that is the minimum crew that this sort of a job could be done with properly? A. Yes, sir, from my experience that is a typical crew and their performance is typical.

By the Commissioner:

Q. You have provided an adequate crew in your calculation? A. Yes, sir.

Q. Therefore, the job on that basis could be done with more work done per dollar than if you had an inadequate crew? A. Yes, sir.

By Mr. Miles:

Q. Now, there is one other account number Mr. Mitchell, because of its relative size. I would like to refer you to these overhead conductors in account 257, as well as overhead transformers in account 258. They appear at pages beginning with page 151 of Respondent's Exhibit No. 2. Will you state the manner in which you arrive at the unit price for materials? A. The unit prices for the materials, for the bare copper water proof conductor, these prices were secured from current quotations, with the freight calculated from the Anaconda Copper Wire and Cable Company, the Anaconda Copper Company supplying you with a base of price for copper on that particular day or period, and from that you work out your extras for stranding and for water proofing and for large quantity discounts, and for reeling and so on. From that base we estab-

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lish the unit pound price that is used in our reproduction cost estimate for the various sizes of wire.

Q. Where is the Anaconda plant located? A. They have several plants all over the country. They have one, I believe, in Connecticut, I believe it is Seymore. I secured freight charges,—that is figured on the freight rate base that the Anaconda people give you for any point in the Eastern zone.

By the Commissioner:

Q. They have plants in the West and they have distributing centers in the East? A. Yes.

By Mr. Miles:

Q. That would be the freight from the nearest Anaconda plant? A. Yes, sir.

Q. How did you get your prices on the overhead transformers in account 258? A. They were secured in the same manner as the meter prices from the manufacturer, applying the discount rates that exist at the present time with the Edison Light and Power and the General Electric Company.

Q. The prices that you have used are the prices that the Edison Light and Power Company could purchase in quantities and at the discount to which they are entitled? A. Yes, sir.

Q. To complete this discussion of the transformer costs, how did you arrive at your estimates for installation of overhead transformers, as reflected in account 259 beginning at page 188 of Respondent's Exhibit No. 2? A. That was arrived at in a similar way by setting up a typical crew and establishing a performance for that crew and applying the labor rate to the various members of the crew, and arriving at a unit price.

Q. Mr. Mitchell you have explained some five or six typical accounts and the method you used for arriving at the reproduction cost of the property embraced within those accounts. I

*Clarence A. Mitchell—For Respondent—Direct*

would like to refer to the question of your calculation of accrued depreciation, going back to the first question which we discussed, namely poles and fixtures, under account 256. Will you state in your own way the method of your approach to your findings of accrued depreciation? A. At the time of the inventory I personally supervised the inventory and actually inventoried about thirty per cent. of the property. At the time of this inventory each man was instructed to note on the inventory sheet the condition that he found the poles, the cross arms, the guy wire, and so forth, in the account, on each street and each section in which the inventory was taken, marking excellent condition, good, or fair condition. After studying all of those reports I made a personal inspection of all of the property, riding up and down the various streets, looking at the condition of the property, and considered the maintenance policy and the condition as a whole of that account, and applied a judgment figure of ten per cent. depreciation against account 256. I also considered the type of poles that the Company was purchasing and the general appearance of the entire distribution system.

Q. How did you arrive at your estimates of accrued depreciation on meters, and while you are discussing it, also how did you arrive at your estimates on overhead conductors and transformers? A. In arriving at a depreciation figure on meters it has been the experience of various companies that the meters do not depreciate very rapidly, unless you have a considerable number of meters, that were purchased prior to, say, 1914, you are unable to compensate for immature changes. That meter account has a very low depreciation, and I found in this Company that their meters, the majority of them, were purchased in recent years and they have constant inspection of the meters, they are maintained and repaired, and for that reason I considered all of those conditions and depreciated the meter account five per cent. The meter installation account I

*Clarence A. Mitchell—For Respondent—Direct*

depreciated three per cent., due to the interpretation of the Public Service classification of accounts. Overhead transformers, I handled in a little different manner. In all of the boroughs, that is outside the City of York, in the territory outside the City of York, they have practically all new transformers. A considerable amount of rural electrification has been going on in the last two years, which required a considerable amount of new transformers, new type of transformers, and for that reason in all of the transformers outside of the City of York, that is depreciated five per cent. In the City of York we have a little different situation. I believe it is the Company's policy this year, or it will be within the next two years, to change over their present twenty-three hundred volt system to a forty-six hundred volt system. It is going to mean that a lot of the present twenty-three hundred volt transformers will have to be rewound, which will require a greater depreciation set-up. For that reason I have given the transformer account in York fifteen per cent. depreciation, and by taking a weighted average of the two I have a weighted average of the fifteen per cent., and five per cent., and it gives you a weighted average of about nine per cent., 'by using' that method.

Q. Mr. Mitchell, this same method of approach that you have described with respect to the manner in which you make your estimates of the reproduction cost of the materials and the cost of labor in connection with transformers and poles and fixtures and meters and conductors, has been followed in the few remaining accounts that you supervised? A. Yes, sir.

Q. And likewise generally speaking, the same method of approach to the question of depreciation, that is to say, physical examination of the property and the formation of a judgment opinion as to its present condition? A. Yes, sir.

Mr. Miles: You may cross-examine.

*Clarence A. Mitchell—For Respondent—Direct*

Mr. Miller: I would like to defer cross-examination of this witness as in Mr. Seelye's case, with the same understanding.

The Commissioner: Very well.

Recess until 1:45 o'clock p.m.

1:45 o'clock p.m.

AFTERNOON SESSION.

CLARENCE A. MITCHELL resumed stand.

By Mr. Miles:

Q. Mr. Mitchell, referring to your testimony relating to the costs of labor that you have used in arriving at the reproduction cost estimates for the property embraced in the accounts regarding which you have testified, I should like to ask you if you have among your work sheets any comparison of the hourly rate for labor that you have used, and that actually experienced by the respondent itself? A. Yes, sir, I have that comparison.

Q. Will you state for the record what that comparison shows? A. The labor rates that I have used throughout all of the operations of the various accounts that I am responsible for are the following:

Line foreman, 90 cents per hour.

Edison Light and Power rate for that type of man is 95 cents per hour.

First-class lineman, 80 cents, used in our estimate.

A 73 cent rate is paid by the Edison Light and Power.

Second-class lineman, sixty-five cents per hour, used in our estimate.

Sixty-five cents per hour paid by the Edison Company.



*Clarence A. Mitchell—For Respondent—Direct*

Ground man, we have used 50 cents per hour in our estimate.

The Edison Light and Power are paying 44 cents per hour.

On labor, we have used 40 cents per hour for labor.

The Edison Light and Power are paying 44 cents per hour.

Q. What sort of labor is there? A. The labor that I have used for 40 cents is the common labor, whereas the Edison Light and Power Company's labor is the same as their ground man, which is a little higher class labor than the common labor. For truck driver I have used 50 cents an hour in our estimate; against 57 cents an hour paid by the Edison Light and Power Company. For labor foreman I have used 75 cents per hour in our estimate, against 73 cents per hour paid by the Edison Light and Power Company.

Q. Do I understand from the comparison which you have just stated for the record that there were only two instances where the hourly cost of labor experienced by the Edison Company is less than the cost of labor which you have used in your estimate? A. Yes, sir, that is correct.

Q. Having in mind the fact that the Edison Company is experiencing a higher cost per hour for labor, why do you believe that you could obtain labor at the rate you have elected to use in your estimates? A. From my experience in hiring men, using men all around the country, I naturally have quite a following of men, and if I need any number of experienced linemen, or second-class linemen, I can get them at these rates. That has been my experience, that we would not have to pay more than these hourly rates to secure enough men to reproduce this property in this section.

Q. In other words, you have contacts with the labor market, so to speak, because of the various construction jobs that you have supervised, and you feel that there would be a sufficient number of men available at the rates you used? A. Yes, sir.

*Clarence A. Mitchell—For Respondent—Direct*

Q. For the purpose of the record Mr. Mitchell will you read the reproduction cost new and depreciated estimate that you have made for each of the property accounts that you supervised? In other words, beginning with account 239, will you state what you found as to reproduction cost new and depreciated for the property embraced within that account? A. In account 239, which is rights of way under transmission system, we have estimated reproduction cost new at \$1,486.

Q. Did you find any depreciation in that account? A. No, sir, we used the same figure for depreciation. Less accrued depreciation has the same amount.

Q. Take up account 242. A. Account 242, poles and fixtures on the transmission system, we have in our reproduction cost estimate new \$70,543; less accrued depreciation \$63,489.

Q. Take up account 243. A. Account 243, overhead conductors under the transmission system, our reproduction estimate new is \$102,095; less accrued depreciation \$96,990.

Q. Account No. 244? A. Account No. 244, overhead telephone system, our reproduction cost estimate new is \$841; less accrued depreciation, \$799.

Q. Account 245? A. Account 245, underground conduits, our reproduction cost estimate new is \$14,302; less accrued depreciation \$13,507.

Q. Account No. 246? A. Account 246, underground conductors, reproduction cost estimate new is \$8,183; less accrued depreciation \$7,774.

Q. Account 254? A. Account 254, rights of way under distribution system, reproduction cost estimate new is \$846; accrued depreciation the same amount.

Q. In other words, there is no accrued depreciation? A. No accrued depreciation.

Q. Account 256? A. Account 256, poles and fixtures, distribution system, the reproduction cost estimate new is \$520,559; less accrued depreciation \$468,503.

*Clarence A. Mitchell—For Respondent—Cross*

Q. Account 257? A. Account 257, overhead conductors distribution system, reproduction cost estimate new is \$436,446; less accrued depreciation \$414,624.

Q. Account 258? A. Account 258, overhead transformers, reproduction cost estimate new is \$377,355; less accrued depreciation \$345,152.

Q. Account 259? A. Account 259, overhead transformer installation, reproduction cost estimate new is \$37,281; less accrued depreciation \$35,290.

Q. Account 266,—rather account 260? A. Account 260, overhead services, the reproduction cost estimate new is \$142,889; less accrued depreciation \$135,745.

Q. Account 262? A. Account 262, underground conductors under the distribution system, reproduction cost estimate new is \$8,283; less accrued depreciation \$7,869.

Q. Account 266? A. Account 266, meters, reproduction cost estimate new is \$296,106; less accrued depreciation \$281,301.

Q. Account 267? A. Account 267, meter installations, reproduction cost estimate new is \$25,302; less accrued depreciation \$24,543.

Q. The last account for which you were responsible is embraced within account 273? A. Account 273, municipal street incandescent system, reproduction cost estimate new \$246,318; less accrued depreciation \$221,686.

*Cross Examination*

By Mr. Miller:

Q. I just like to ask one question. What overheads did you include in your estimated cost of reproduction for poles, for example? A. I included the direct engineering and supervision, purchasing of material, design, survey—

Q. By survey what do you mean? A. Surveying and laying out the distribution lines, preparing the prices.

*Clarence A. Mitchell—For Respondent—Cross*

Q. Did you have any contractor's profit in there? A. No, sir.

Q. Will you turn to page 125 of respondent's exhibit No. 2, taking the fourth figure from the top, 1,012. I take it that is 1,012 poles, is that right? A. Yes, sir.

Q. In account 256? A. Yes, sir.

Q. And the corresponding price of \$21,647. Will you tell me how you arrive at the cost per pole of that? A. The material price per unit, f. o. b. York, for the 35 foot Western red cedar pole is \$13.54.

Q. That is the pole alone? A. That is the pole alone, yes, sir. The labor for that pole is \$3.48.

Q. How many hours do you figure on in that labor? A. That labor is made up of unloading and stacking the poles, distributing of poles, digging holes and setting the poles.

Q. Can you give me the number of hours? A. I can give you the performance of that crew during that operation. It is the same.

Q. How did you arrive at your \$3.48? A. By establishing a crew for unloading and stacking, which gave me a price of twenty-six cents per pole; establishing a crew for loading and distributing poles for their location, which gave me a price of 44 cents per pole; establishing a crew for digging the holes, setting the poles, which gave me a price of \$2.78 per pole. That gives me a total labor price of \$3.48.

Q. What hourly rate for labor did you use in that computation? A. I used eighty cents an hour for first-class line men—

Q. Where would that be used? A. That would be used in setting the poles; sixty-five cents an hour for second-class line men; fifty cents an hour for ground men, forty cents an hour for labor; fifty cents an hour for truck driver.

Q. What kind of labor would be used mostly in this operation of transferring a pole from the car and setting it up? A.

*Clarence A. Mitchell—For Respondent—Cross*

For instance, the crew to unload and stack the poles consists of one material foreman, one second-class line man, three laborers, one tractor operator that would unload the poles and stack them in the yard. The crew for distributing the poles consists of one material foreman, one material checker, one laborer, one truck driver.

Q. We have the pole and the labor. What is the next item?

A. We have the equipment, the equipment cost for unloading and stacking for that particular pole is thirteen cents per pole; distribution of poles sixty-three cents; digging holes and setting poles \$1.32. That gives a total equipment charge for that pole of \$2.08.

Q. Any other items in that pole cost? A. That gives you a total of material, labor and equipment for that thirty-five foot pole of \$19.10. To that we have added direct engineering, field office supervision, a percentage of twelve per cent. \$2.29, arriving at a total unit price for a thirty-five foot Western Red Cedar pole in place \$21.39.

Q. You multiply that unit price by the number of poles determined from your inventory? A. Yes, sir.

Q. And you arrive at the twenty-one thousand dollar figure? A. Yes, sir.

Mr. Miller: That is all for the present.

Mr. Miles: We would like to recall Mr. Reed, who has been previously sworn, and while he is on the stand in connection with the various accounts which he supervised, is there any objection to his assistant, Mr. Erickson, who has a great deal of supporting data in his books, to sit near him, where he can be available?

Mr. Miller: We have no objection.

*Harry A. Reed—For Respondent—Direct*

HARRY A. REED, being recalled, testified as follows:

*Direct Examination*

By Mr. Miles:

Q. Mr. Reed, I believe you have stated your qualifications for the record? A. Yes, sir.

Q. I should like to ask you, and if you will follow me by reference to your own notes, whether you supervised the estimates as shown in Respondent's Exhibit No. 2, with respect to the reproduction cost new and depreciated of the property embraced within account numbers 204, 207, 208, 237, 240, 275, 276, 278, 279, 280, 281, 282, 284, 285, and 286, as well as those embraced within the account numbers relating to the generating facilities and included within account numbers 209, 210, 211, 214 and 215? A. That is correct.

Q. They are all of the account numbers that you have been concerned with in this estimate? A. Yes, sir.

Q. Of the electric property? A. Yes, sir.

Q. That is to say, all of the account numbers that I have referred to, which you have identified as having supervised the estimates, relate only to the electric property? A. Yes, sir.

Q. Will you take the first of the accounts enumerated in my previous question and explain the method employed by the company, by Day & Zimmerman, in reaching their conclusions as to the reproduction cost new of the land, which is embodied in account number 204? A. The figures which we have used in this report, referring to land, in account 204, are the result of an appraisal which we caused to be made by a qualified appraiser familiar with land conditions and land valuations in the territory comprising York and its suburban sections.

Q. That appraisal was for the purpose of establishing the appraiser's judgment as to value of that land as of November 30, 1936? A. Yes, sir.

Q. Was the appraiser in question a resident and engaged in



*Harry A. Reed—For Respondent—Direct*

business in York, Pennsylvania? A. Yes, sir, and had been for a good many years.

Q. Will you state who the appraiser was? A. Thomas C. Mills of York, Pennsylvania.

Q. So that the figures shown on page three are Mr. Mills' appraisals for the three lots referred to, or the sites referred to on the page? A. Yes, sir.

Q. Referring to account 207, which has to do with structures in the steam generating system, will you explain the method employed by you in arriving, first, at the unit costs of material, and then the cost applicable to labor? That account, I believe, is shown on page four, at the beginning of page four?

A. As a result of having prepared a detailed inventory of the various materials that entered into the construction of this turbine room, we became familiar with the kind of material and the kind of labor that would be required to build such a structure. With this information we then secured prices for the various principal items of material. In some cases prices were obtained from sources available in the City of York, and in the case of specialized material, usually obtainable only through large centers, we went to sources in Philadelphia, Baltimore and Harrisburg for the necessary information. As to material like crushed stone, sand and cement, as well as brick and lumber, the prices are prices that are being paid and were at that time being paid in York for work of that type that we are considering. It would be prices prevalent during the month of November, 1936. As to the prices we have used in our unit costs for labor, we obtained the rates prevailing in York for November, 1936 from a contractor operating in York and who was thoroughly familiar as a result of his current business with those rates. We were informed by him that there was not an adequate supply of building trade labor in York to permit a contractor to rely on such a supply for the force that will be necessary to engage in a reasonably large building contract. It

*Harry A. Reed—For Respondent—Direct*

was adequate for small jobs like residence construction, small garages and so forth, but to consider a building like the car barn or the power station.

By the Commissioner:

Q. Do you mean car barn? A. Power station, I beg your pardon, the office building and the various other structures, it would require a large force of building labor to be brought in from either Harrisburg or Baltimore.

By Mr. Miles:

Q. With respect to the costs applicable to such labor as would have to be imported, what is the base for the labor rates that you assumed in such instance? A. We have used the labor rates that prevailed in Harrisburg as of the month of November, 1936, as the base for our labor costs.

Q. On the theory, I take it, that that is the closest point to York where such labor is available? A. Yes, sir.

Q. By way of illustration, Mr. Reed, referring to page four, the various figures shown in the column on the right, as I understand it, indicate the cost of the particular item set opposite each of those figures? A. Yes, sir.

Q. To illustrate, grading and demolition would cost for this particular structure \$207? A. Yes, sir, that is our estimate of cost.

Q. And so on through the various units of property that comprise the structure? A. Yes, sir.

Q. The last four items including contractor's field expense, contractor's profit, owner's completion bond and the architect's fee? A. That is correct.

Q. Having that in mind, I assume then that you prepared this exhibit on the basis that the contract would be awarded to some independent contractor for the construction of this particular structure, and that it would not be done by the Company's own available crew or force? A. That is correct,

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that was our judgment, that it would be more economical for the Company to employ a general contractor to handle the construction of all of the buildings encountered in the Edison Light and Power Company as a basis of this estimate. We have therefore added to the dollars arrived at by the unit cost allowances for the expense that a general contractor would incur in our judgment if he would undertake such a contract.

Q. Will you state for the record the percentage of profit that you have assumed would accrue to a contractor by virtue of the construction of the turbine room, shown on page four of Respondent's Exhibit No. 2? A. We have used eight per cent, as a basis for contractor's profit in the construction of the turbine room in Account 207, on page four.

Q. Has that same percentage of profit been used in all of the structures that are included within this exhibit? A. That is correct for all of the structures in the electric utility.

Q. You include the office building also among those structures? A. Yes, sir.

Q. Will you refer to Account No. 208? The account involves very little, but will you tell us very briefly how were the estimates made, but do not go into much detail because it plays an insignificant part in the aggregate estimate? A. The inventory was based of course on actual measurements of the property in the field. We have applied unit prices for laying forty-six lineal feet of track, and have arrived at a total of \$151 for the track alone. There are two Hayes type wheel stops at an estimated price of \$120. That includes both labor and material. Then there are the allowances for the contractor's organization, which brings the total of that account to \$338.

Q. That would be presumably the same contractor who put up the building? A. It should be by all means, as a part of the work.

Q. You proceeded on that assumption in the preparation of this exhibit? A. Yes, sir.

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Q. The next account which you have supervised is Account No. 237, which is merely another land account, relating to land in the transmission system, and I understand the source of your information in that account was obtained from the same appraiser who appraised the land constituting the part of the generating system? A. Yes, sir.

Q. Account 240 for transmission system structures is your next account, beginning at page 67. Was your approach to a determination of the costs of materials and labor for the units of property embraced within that account the same as you have testified to with respect to power plant structures embodied within Account No. 207? A. The approach and the method are identical.

Q. Account No. 275, general office land, I take it that the appraisal for that is similar to the other land that you have referred to? A. That is correct.

Q. Account No. 278, which is the next—

The Commissioner: You mean the appraisal that was made by Mr. Mills?

The Witness: Yes, sir.

By Mr. Miles:

Q. Your approach and method for arriving at your estimates for the reproduction cost of general office structures are the same as the structures relating to the generating system and the transmission system? A. Exactly the same.

Q. Referring however to that item for a moment, which is Account No. 278, beginning at page 249, the amount of dollars involved in that structure is substantially more than the dollars involved in the transmission and generating system structures, is it not? A. No, I believe the generating structure, the central power station is the largest unit of property that has been described as a number of individual units. Actually they have

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one building but it is separated for the purpose of parity in description.

Q. But the different kinds of material involved in this general office structure, as shown on page 249, are more varied than those in the other structures? A. That is correct.

Q. Is it or is it not a fact that the greater part of this material would have to come from points outside of York than is involved in the other structures? A. Generally speaking that is correct.

Q. Take the item of carpentry and mill work, page 249, as one of the units in the general office structure, state how you arrived at the estimate of that particular item? A. Every item of carpentry and mill work in the general office building was identified by class and size on the list of items which we have separately identified and comprise the four pages of details and one of our work sheets, and covers such items as wood and glass partition, studding, sashes and a dozen other classes of carpentry work. Each particular class of installation is priced either on a square foot, a board foot or lineal foot basis, whichever of those bases was customarily used by woodworking mills as the basis for bidding on contract work. Unit prices have been developed and appear in our working papers for each of these classes of installation. When the proper unit price is applied against the quantity for a specific item of material, and then all of these items are totalled, as shown on these working sheets, we arrive at the total of \$18,380, which appears opposite that title on page 249. If you care to go into more minute detail on that, we have the papers and that can be done.

Q. Here again, wherever there was local labor available for work of the character involved, you have applied labor costs at the prevailing York rate, is that correct? A. Wherever we considered we could get labor for the purposes that were required, we have used the York rates.



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Q. Where not available you have used the Harrisburg rates? A. Yes, sir.

Q. In connection with the item of brick work on that same structure, the same method of approach was followed, was it not, in arriving at your figure of \$14,425? A. Yes, sir, there was under the item of brick work two different classes of brick work involved, and two different unit prices had to be developed, common brick and face brick. They take different prices, but combined they arrive at the total as shown on page 249.

Q. Accounts 279, 280, 281, 282, 284, 285, and 286, will you, without going into the same detail, because they are not substantial accounts but just summarize briefly the method employed in arriving at your estimates for the property within those accounts? A. Every item that appears in our report and included within these accounts was actually inventoried, measured and inspected by one of our men. With this inventory as a guide prices were secured from manufacturers direct or from manufacturers' catalogue and list prices, less discount, which we received from manufacturers, and those prices are used to arrive at the total dollars set forth in this report.

Q. I ask you to refer to boiler plants equipment in Account 209, and referred to on page 15 of Respondent's Exhibit No. 2, and I would like you to explain rather carefully the method employed for the purpose of affixing the reproduction cost of the boilers which you have listed on pages 15 and 16, of the exhibit I have just mentioned? A. The reproduction costs which we have used in this study are based in the first instance on the prices quoted by letter from the Babcock and Wilcox Company, for the purpose of a report we made in 1934—

Q. That was in the merger case? A. Yes, sir; inquiries on our part to the Babcock and Wilcox Company in this year 1936 developed that the price they would ask for submitting identical equipment would be ten per cent. higher than they had quoted in 1934. We therefore increased the 1934 delivered

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price by ten per cent. and used that as the cost of the material delivered to the site.

Q: Does that observation apply to all six boilers mentioned on pages 15 and 16? A. Yes, sir.

Q. Go ahead, Mr. Reed. A. We have estimated the amount of labor to be required by applying a percentage to the delivered cost of the boilers, which percentage is based on our own actual experience in erecting this class of boiler. We have also added an estimated amount for small tools in the operation of the equipment, that will be necessary to move these boilers from the cars and to erect and test them, making them ready for operation, and to the total thus arrived at we have added twelve per cent. for field and supervision expense, which would give us the total dollars for each pair of boilers covered by the description on pages 15 and 16 in account 209.

Q. Would any appreciable part of the labor incident to the installation of that equipment of this character be available in York? A. Aside from some common labor which you will probably encounter, I would say that every bit of labor on boiler installation would have to be brought from, most likely Harrisburg, or some other center where a large number of boilers are installed.

Q. To the extent that local labor could be utilized in this installation job, have you reflected its use in your labor costs? A. Yes, sir.

Q. That same approach and method has been followed in arriving at your estimates for all of the items embodied within Account No. 209, relating to boiler plant equipment, has it not?

A. There are minor items appearing in the balance of the description under that account where we obtain telephone quotations from actual manufacturers, or a verification on their part of the price which they have quoted us in 1934, that that price still held true.

Q. But you have used the manufacturer's quotations,

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whether they were the same as included in your 1934 appraisal or not? A. That is correct. In the latter part of Account No. 209, starting on pages 21 and 22, steam piping, all of the prices that are used to arrive at the total shown are taken from the Crane Company, with the discounts applied that were current in the month of November, 1936.

Q. You mean discounts that would be enjoyed by the Edison Company in purchasing equipment? A. Yes, sir.

Q. Account No. 210 which starts at page 24 has to do with the steam engines and turbines in the generating system. Referring to the first item there of the Allis steam engine, how did you form your conclusion as to the estimated reproduction cost new of that unit of property? Mr. Reed, to expedite the matter a little bit, I do not want to take up any more time than is necessary, as a matter of fact, hasn't the use of that steam engine been discontinued by the respondent? A. Yes, sir.

Q. It is not properly now used and useful? A. That is correct.

Q. In view of the fact that that is going to be shown on a subsequent summary, let us skip that and let us confine ourselves to that part of the equipment included within the steam engines and turbines under the generating system in Account 210, which is used and useful in the Public Service. I want to develop the method adopted with respect to arriving at your appraisals for the property embraced in this account? A. The comment that you just made about the non-use of the Allis engine also applies to the lubricating oil equipment amounting to \$833 on the same page. The next unit, a Westinghouse-Leblanc condenser, where there is shown a total of \$15,585 in our reproduction cost estimate, is based on a quotation which came from the Westinghouse Company for delivery of an identical machine to the one now in the power station. Their quotation was for delivery and we have estimated the erection of the unit and have included in the total of \$15,585 the concrete

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foundations on which this unit is supported. As in the description under boilers we have also included an allowance for tools and equipment and further have added twelve per cent. for field expense and supervision to arrive at this total.

Q. Can you give me an approximate estimate of the proportion of the sum of \$15,585 for that unit which is represented by labor? A. The total labor estimated is \$862; the material delivered is \$12,926.

Q. Mr. Reed, referring now to page 25 of Respondent's Exhibit No. 2, and still on the subject of steam engines and turbines, will you state briefly the basis of your estimate of \$30,781 for the miscellaneous items described as one lot of intake and discharge conduits, wells and screen house? A. Our estimate for these items is based on measurements taken in the field to develop quantities for the various operations necessary to complete the installation of the intake and discharge conduits. These operations include earth excavation, rock excavation, backfill, cofferdam, sheet piling, concrete, lumber and so forth. The unit prices for every class of labor and material are indicated on our work sheets and the totals for each class appears there, and the computation shows the same total that we have indicated on page twenty-five in our report.

Q. Turn to Account No. 211, Turbo-generators, comprising a part of the generating system. The first Turbo-generating unit listed on that page indicates an estimated reproduction cost new of \$100,153.00, and the second turbine generator unit you have estimated will cost to reproduce \$51,946. How did you arrive at your estimates for these two rather substantial items? A. We have a letter of quotation from the Westinghouse Electric and Manufacturing Company, quoting delivery prices on each of these items of equipment. We have taken this delivered price and have added to it the amount to represent the cost of labor, for erection, the use of tools and equipment, exactly the same as I described in the case of the boiler

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account. I arrived at the figures which we have indicated on this page.

Q. Your labor calculations have been approached in the same manner? A. Yes, sir.

Q. You have mentioned from time to time that you obtained some of the bids from contractors or manufacturers and in your earlier testimony in this case you have stated some of your experience in connection with construction work, and I would like to ask you whether these various estimates of reproduction cost new that you have made for these generating units and these other items embodied in the generating facilities represent prices which in your judgment it would cost the Edison Company to actually obtain and install such units in place? A. After a study of the way in which these pieces of equipment are installed in the plant of the Edison Company, and based on the quotations we have received from the responsible manufacturers, and my own experience in having installed the identical type of equipment in power stations at other places, I am of the opinion that the prices which we have used in here are the prices that would prevail if we were lubricating this plant as of November, 1936.

Q. If you were making an estimate for the Pennsylvania Light and Power Company or anybody else as to what it would cost to construct and install these various units of property, or new ones of the same type, would you arrive at the same estimates that you have listed in this exhibit? A. Yes, sir.

Q. Would you follow the same method in determining the estimate for that purpose that you would for the purpose you used it here? A. Yes, sir, the same method and I have used it a great many times in actual construction work.

Q. Have you any particular comments to make with respect to accounts No. 214 and 215, which are the last two accounts under your supervision? A. The amounts we have arrived at

*Exhibit A. Book—For Information—Excerpt*

for the work outlined in Accounts 114 and 115 are based on exactly the same method of quotations from manufacturers for the materials listed, plus, as a number of instances, the manufacturer's quotation for the labor of installation, and in a few cases our own estimate of the labor that will be necessary to complete the installation.

Q. Now, passing Mr. Reed from a consideration of the reproduction cost now to the question of accrued depreciation, let us take Accounts Nos. 106, 107, 111, 114 and 115, all of which relate to the generating facilities of the Company, and I would like to ask you, generally speaking, what has been your method of approach to your determination of the accrued depreciation on these facilities? A. Primarily the accrued depreciation on these facilities is based on a very careful inspection of the various items comprising these accounts, this inspection coupled with the questions submitted to the operating officials, which develops the extent to which the various facilities are used. It also enables us to form an opinion of the Company's maintenance policy. In this particular instance our inspection did not develop the fact that there was any great amount of deferred maintenance. The property as a whole was in excellent condition. Some of the equipment which is now approaching twenty-two years of age, is not as efficient as more modern equipment, and therefore carries with it a certain amount of obsolescence. We have attempted in our study to reflect in our judgment a combination of the elements of wear and tear, obsolescence, inadequacy and changes in the art, and the judgment which we have formed we have expressed in the form of a percent related to the reproduction cost new.

Q. Well now, do I understand, for instance, that in arriving at your estimate of accrued depreciation on these generating facilities, one of the factors that you have considered is the large extent to which the Company purchased its power requirements? A. Yes, sir, we have considered the total load



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which the Company has, the amount of purchase power, the history in the last few years of the extent to which the generating facilities have been used, and form a judgment from that as to how much they will probably continue to be used.

By the Commissioner:

Q. How much have they been used in the last two years? A. It has not been a continuous operation. They are not in continuous use, speaking now of the electrical generating facilities. They have been called upon on occasions, as in the early part of 1936, in the flood to operate for a number of hours.

Q. Outside of that one time how many times? A. I do not recall the figures, Mr. Commissioner but we will submit another exhibit—

Q. Do you recall any other time? A. A two thousand kilowatt turbine is in almost constant use during the cold weather season extending from September on through until May.

Q. During the period when they are furnishing steam heat? A. Yes, sir, the five thousand k v unit, aside from the emergency use which it had in 1936, is not ordinarily used as a generator. It has other functions in the system.

By Mr. Miles:

Q. Have you or not given any consideration to the obligations imposed upon the respondent relating to generating facilities, as disclosed in its purchase power contract? A. We have considered that. We also considered the possibility of interruption that might occur from either of the present sources of purchase power. The existing facilities of the Company will not permit it to supply its power obligations from one source alone. Unless they were to rely on the steam generating station to supplant the power that would be cut off from the third source, or replace the power which would be cut off.

Q. Mr. Reed, what have you to say as to the manner in which you have approached your conception of accrued depre-

*Harry A. Reed—For Respondent—Direct*

ciation on the structures that are involved in your property accounts? Next to the generating facilities that seems to be the largest item with which you are concerned? A. The structure which comprises a steam generating station is primarily a means of support for the equipment which is installed within it. The structure comprising the power station of the Edison Light and Power Company is very well designed, well constructed and well maintained. There is very little evidence of any destruction caused by wear and tear. As long as the structure continues to house the necessary equipment and remains in good condition physically, the amount of depreciation in my opinion that can be applied to it is very small.

Q. How about the depreciation that might properly be applied to the structures in the general property accounts, such as general office structure and other general structures, including accounts 278 and 279? A. There is a certain element of depreciation in the general office building in excess of what we encounter in most of the remaining structures owned by the Edison Light and Power Company. Obsolescence due to age and the type of facilities included in this building, is a very definite factor. In addition to that, the type of design is such that ease of access and moving from one section to another is somewhat impeded, and for that reason, among others, we have judged that there would be more of a depreciation accrued in that structure than in most of the other structures now being used by the Edison Company.

Q. Now Mr. Reed, by way of concluding your testimony and for the purpose of the record, will you please let me have your estimates of the reproduction cost new and depreciated for each of the property accounts included within your testimony, starting with Account 204? A. Account No. 204, land, reproduction cost new is \$44,137; depreciated the same figure.

Q. Account No. 207? A. Account No. 207, structures, the

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reproduction cost new is \$221,898; the depreciated figure is \$214,500.

Q. Account No. 208? A. Account No. 208, railroad sidings and trestles, \$338 new, and \$321 depreciated.

Q. Account No. 237? A. Account No. 237, land, \$11,485 both new and depreciated.

Q. Account No. 240? A. Account No. 240, transmission system structures, \$22,613 new, and \$22,277 depreciated.

Q. Account No. 275? A. Account No. 275, general office land, \$113,625 new, and depreciated the same.

Q. Account No. 276? A. Account No. 276, other general land, \$27,350, new and depreciated.

Q. Account No. 278? A. Account No. 278, general office structures, \$110,505 new, and \$93,929 depreciated.

Q. Account No. 279? A. Account No. 279, other general structures, \$62,378 new, and \$57,595 depreciated.

Q. Account No. 280? A. Account No. 280, general office equipment, \$57,724 new, and \$50,673 depreciated.

Q. Account No. 281? A. Account No. 281, general store equipment, \$3,545 new, and \$3,062 depreciated.

Q. Account No. 282? A. Account No. 282, general shop equipment, \$8,592 new, and \$6,942 depreciated.

Q. Account No. 284? A. Account No. 284, general garage equipment, \$52,551, new, and \$28,903 depreciated.

Q. Account No. 285? A. Account No. 285, general laboratory equipment, \$21,062, new, and \$18,911 depreciated.

Q. Account No. 286? A. Account No. 286, general tools and implements, \$4,297 new, and \$3,667 depreciated.

Q. The account numbers relating to generating facilities, first Account No. 209? A. Account No. 209, boiler plant equipment, \$338,932 new, and \$281,827 depreciated.

Q. Account No. 210? A. Account No. 210, steam engines and turbines, \$82,945 new, and \$43,869 depreciated.

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Q. Account No. 211? A. Account No. 211, Turbo-generators, \$154,972 new, and \$126,724 depreciated. A

Q. Account No. 214? A. Account No. 214, coal storage and weighing equipment, \$23,714 new, and \$18,971 depreciated.

Q. Account No. 215? A. Account No. 215, other power plant equipment, \$10,510 new, and \$9,086 depreciated.

Mr. Miles: You may cross-examine.

By the Commissioner:

Q. The general office structures, the general office at 27 West Market Street, is that building entirely used by this Company, by the Edison Light and Power Company? A. It is a four story building, yes, sir, and they have offices on every floor in that building. There are, it is true, other companies having office space jointly with the Edison Company in that same structure.

Q. They do not pay any rent to the Edison Company for that office space, to the Edison Light and Power Company, or do they? A. They do not pay rent, no, sir.

By Mr. Miles: .

Q. Assuming that these companies were physically divorced and had no relationship one to the other, would you say, that, based on your investigation of that building, the respondent would require substantially that entire building for its own force? A. Yes, sir.

Q. In other words, could there be any appreciable surplus space if the space now occupied by the railways company and the steam-heating company was vacated by those two companies?

Mr. Miller: I cannot see that Mr. Reed is qualified to express an opinion as to that.

Mr. Miles: He was interrogated by the Commissioner as to that.

*Harry A. Reed—For Respondent—Cross*

The Commissioner: Objection overruled.

A. Appreciably, no.

By the Commissioner:

Q. Well now, Mr. Reed, how do you know that? A. Mr. Commissioner, we have been making a very careful study of the work that all of the departments, all of the employees in that building are doing. That information will be submitted later by Mr. Katz, and based on our analysis of the functions of the employees in that building, the amount of space which is necessary for an employee to have to work reasonably efficiently, it is my opinion that the staff of the Edison Company could comfortably occupy that building without any surplus space other than for normal requirements.

Q. Do you mean to say that the offices of the Edison Light and Power Company are crowded and should be spread out in more space? A. As a result of that overcrowding the Edison Company has found it necessary to rent space in adjoining property to take care of their requirements.

By Mr. Miles:

Q. Isn't it a further fact known to you that the amount of space, additional space that they have rented is more space than that which is occupied by the railways company and the steam heating company in the building? A. That is my impression but the study has not been entirely completed when I left and I would not state that as a fact at this time.

*Cross Examination*

By Mr. Miller:

Q. Mr. Reed, you stated that you applied an eight per cent. figure to obtain the contractor's profit. Now, to what accounts did you apply that eight per cent. figure? A. All of the structure accounts, the accounts relating to buildings.

*Harry A. Reed—For Respondent—Cross*

Q. I assume you also applied a percentage to determine an allowance for contingencies? A. Yes, sir.

Q. What was the percentage applied to determine that?

Mr. Miller: Does your last question relate only to structures?

Mr. Miller: Yes.

A. We applied five per cent in our construction of all buildings to cover contingencies and omissions of inventory—

Q. The same percentage is applied to each structural account? A. Yes, sir.

Q. As to field expense, what was the percentage? A. Field expense in structural accounts, eight per cent.

By Mr. Miller:

Q. That percentage applies only to structures? A. Yes, sir.

Q. Buildings only? A. That is correct.

By Mr. Miller:

Q. You mean it would not apply to steam engines and turbines? A. No, sir.

Q. Would it apply to boiler plant equipment? A. No, sir.

Q. What percentage did you apply to arrive at a figure for completion bond of the owner? A. One and one-half per cent.

Q. The architect's fee? A. Architect's fee five per cent on the total, not including owner's completion bond.

Q. What percentage did you apply to Account No. 209, boiler plant equipment cost, to fix the labor cost? I believe you stated you used some percentage to determine the labor cost? A. There was no fixed percentage. Various percentages were used for various types of equipment and various kinds of equipment.

Q. In the boiler plant equipment account? A. Yes, sir. That would vary with the class of material and the place where



*Harry A. Reed—For Lieutenant-Cross*

is now being installed. It is based on our own operations in similar work.

Q. It would vary as to different items in the account? A. Yes, sir. The percentages would range from approximately five per cent. on some to fifteen per cent. on others, to determine the labor expenditure that we expect to incur.

Q. As to the delivered cost would the same be true or did you have a fixed percentage within the boiler-plant equipment account? A. I do not believe I understand your question.

Q. From the rail head to the point of erection— A. The percentage which we applied for labor includes unloading from cars to its erection in its final location.

Q. That would be included in the five to fifteen per cent.? A. Yes, sir.

Q. It is my understanding that you used twelve per cent. for field and supervision expense in connection with the boiler plant equipment, is that right? A. Yes, sir.

Q. Was that percentage applied generally in cases where you did not have the field expense figure of eight per cent.? In other words, was the twelve per cent. figure used in accounts other than the structural accounts, where construction work was performed? A. In the accounts to which I have testified, covering boiler house installation and turbine house installation and the accessory equipment, I have added twelve per cent. for field expense and supervision only. There is no profit to the contractor included in that figure. In other words, it is our conception that that work would be done by an organization which the company itself would set up to supervise, design and take care of all work incident to the installation of that equipment.

Q. Will you tell me how you arrived at the twelve per cent. for that item? A. The twelve per cent. figure which we have used is intended to include detail engineering design, field supervision, cost of superintendence and the employees necessary in the construction office.

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Q. What I want to know is why you used twelve per cent. rather than ten per cent.? A. I was coming to that. It also covers store room, miscellaneous facilities necessary in a construction operation of this size, my own experience in having built a number of plants quite identical in design, and having kept construction costs on them, I felt that four per cent. of the construction costs is a reasonable figure for making the detailed construction plans and drawings. About four per cent. additional would cover the cost of superintendence, job engineer, inspection and the cost of operating or maintaining the construction office. The other four per cent. which makes up the figure of twelve per cent. is the cost of auditing and the traveling in the inspection of items that have to be inspected in the plant, a temporary production of light and heat, telephone, etc. I have had it on certain types of work as low as eight per cent., and on others as high as twenty-four, but from my own judgment and my own experience on other comparable jobs, I felt that twelve per cent. was reasonable for us to use for that class of work.

Q. As to your depreciation figure did you determine your depreciation on the straight line method or sinking fund method? A. No, sir.

Q. How did you determine it? A. On observation and inspection, a judgment figure.

Q. What did you figure the life of the boiler plant equipment to be? A. I don't know. It depends entirely on the continuance of the maintenance period or time, replacing necessary parts, if they wear out.

Q. I assume you did not use a percentage figure to determine the depreciation? A. I used it as an indication of the relation between the present condition of an item, with its reproduction cost new.

Q. How did you determine the percentage? A. That is a judgment.

*Harry A. Reed—For Respondent—Cross*

Q. How did you arrive at it? Don't you have to estimate the life of the property and then work out a percentage— A. Personally I did not do it that way.

Q. How did you do it? For instance, take a special account, boiler plant equipment, what percentage did you apply to your reproduction cost new figure to get your depreciation?

A. On some items we applied eighty-five per cent.

Q. You depreciated some items eighty-five per cent.? A. No, sir, that was the condition, in other words, the depreciation was fifteen per cent.

Q. How would you determine the fifteen per cent.? Would you go out and look at the property or how would you get the percentage? A. The percentage is simply a convenience for translating into the form of dollars what the depreciation is.

Q. Would you have to estimate the life of the property? A. I personally know of no way of estimating the life of the property. There have been many attempts to establish that but that is purely arbitrary.

Q. How do you determine that fifteen per cent. of the life of the property was gone? A. I do not think that fifteen per cent. of the life of that property has gone because that would be an indication that fifteen per cent. was the wear and tear that exists in that property up to the present time. As a matter of fact, in the question of depreciation the boilers that were well built in the beginning had they been well maintained throughout their life, wear and tear is the least of the elements that enter into a determination of depreciation. Obsolescence is more important. Now, obsolescence in this case is affected by changes in the art. In view of the rapid changes in the art I think that fifteen per cent. is a sufficient figure for accrued depreciation. In this particular instance I think it is, because the main requirements of a boiler in this property today are satisfied by a boiler of the type and of the condition we have. There would be no engineering justification

today for the use of a more modern, high pressure type and more expensive type of boiler for the conditions that were encountered. It might be true of another station but it is not true in this particular case. We regard it as a stand-by plant.

(Recess.)

By Mr. Miller:

Q. Mr. Reed, you used that same method of determining depreciation on all of the accounts to which you applied depreciation? A. Yes, sir, it is a judgment based on inspection and study of the various conditions.

Q. It bears no relation to the age of the property? A. Age has been considered but it is not a determinate in arriving at depreciation.

Q. In other words, the principal determinate is the degree of obsolescence? A. It proved to be in this property, yes, sir.

Q. So that if you were in the course of the remainder of this week furnished information which led you to believe that the plant would be obsolete in a short time, and you went down next week and observed that property, and in the light of that new information you might find it was fifty per cent. depreciated? A. That is possible.

Q. Even one hundred per cent.? A. In some cases that would be true.

Q. And if you could observe it a year from now and there had been no advance in the art or in the method of operation which would affect the obsolescence of that plant, you would probably say that no annual depreciation,—that during that year there had been practically no depreciation, is that right? A. Will you please repeat that question?

Q. Supposing the conditions of the art were the same a year from now as they are now, would you say the property had been depreciated in the course of the year?

*Harry A. Reed—For Independent Cross*

Mr. Miles: Are you referring to the generating facilities?

Mr. Miller: To all of the property to which be applied depreciation.

The Commissioner: There are different factors entering into different classes of property. You cannot lump them together. There might be an insignificant depreciation in one and a great depreciation in another.

Mr. Miller: That might be so.

By the Commissioner:

Q. Isn't that true Mr. Reed? A. That is so.

Q. Depreciation varies very materially with different classes of property? A. Yes, sir. Let me give you an example to illustrate my understanding of what you are trying to arrive at. We will take the general office building. Now, if for some reason it should become necessary during the next year for the Edison Company, in order to comply with the requirement in the way of new records which might have to be kept, which would call for a large expansion in personnel, so that that office building would be absolutely unsuitable for use, obsolescence, from the standard of the Edison Company, would be entirely different a year from now than with their present requirements.

By Mr. Miller:

Q. Supposing there is no change in their necessities with respect to the office building, for example, would you say it had not depreciated to any appreciable extent? A. If all of the factors were equal, if maintenance and upkeep are the same then as they are now, and there was no evidence of physical deterioration over and above what we now encounter, it is probable that there would be no change that I would find in that building—

*Harry A. Reed—For Respondent—Cross*

Q. Let me see if I can state it more specifically so that I can get a definite answer. If there were no obsolescence in the course of a year, would you say that the property that you have depreciated had sustained no additional depreciation, would that be true? A. Not necessarily—

The Commissioner: I do not see how Mr. Reed can answer that without considerable qualification to his answer.

Mr. Miles: Counsel for the Commission is using the word obsolescence of being synonymous with depreciation.

The Witness: There are numerous causes recognized generally, I believe, that result in depreciation accruing in a property. Among those causes are obsolescence. We also have wear and tear, destruction due to overload, the action of public bodies, the question of adequacy and inadequacy and numerous other elements.

By the Commissioner:

Q. What do you mean by acts of public bodies? A. Sometimes a municipal ordinance will cause the widening of a street on which a sub-station may front, on the building line, and that may mean that that sub-station may have to be moved to another location. The building that would be thus vacated would suffer through the action of public bodies, and the only salvage might be in the brick walls.

By Mr. Miller:

Q. Would there be any way of relating the annual depreciation allowance to your allowance for accrued depreciation? A. No, sir.

Mr. Miller: I would like to defer any further cross-examination at this time.



*Harry A. Reed—For Respondent—Cross*

By Mr. Miles:

Q. Mr. Reed, do I understand that you are taking the position that obsolescence is the principal factor in the determination of the accrued depreciation that has been estimated, particularly with respect to all of these various accounts, regarding which you have testified? A. Generally speaking, obsolescence is the most important of the various factors.

Q. In these various accounts? A. Yes, sir.

Q. In addition to the degree of obsolescence you have also considered the factors enumerated in your last answer to Mr. Miller? A. Yes, sir.

Q. After considering all of these factors which you have enumerated you have arrived at your own estimates of accrued depreciation? A. Yes, sir.

Q. And have expressed them in percentages which differ with respect to the different properties or with respect to the different property accounts? A. Yes, sir.

Q. You have not attempted to adopt any specific form or rule of thumb? A. No, sir.

Q. You were not persuaded by Mr. Miller's theory of the straight line method?

• Mr. Miller: That is not my theory.

By Mr. Miles:

Q. You have not adhered to any straight line theory in estimating accrued depreciation? A. No, sir.

Q. Some questions were propounded by counsel as to your method of estimating labor costs by relating those costs in expressed percentages with the direct costs. Is that or not the usual way of making such an estimate in reproduction cost appraisals? A. It is very usual. As an illustration of that in our working papers there may be many quotations on the part of a manufacturer, in which it is stipulated the per cent. that

*Arthur B. Favor—For Respondent—Direct*

they would add to the cost of the material if they were asked to include erection.

Q. You were also asked certain questions by counsel for the Commission with respect to the inclusion of a contractor's profit, and the question was propounded to you once or twice as to whether you had included this in all structural accounts. As I understand it, the only place where such a profit has been included is in accounts relating to building structures? A. That is correct.

Q. That is also true with respect to any inclusion for estimating expense of owner's completion bond or architect's fees? A. Yes, sir.

Q. The only three items, therefore, where such inclusion is made relate to Account No. 207, structures in steam generating system, Account No. 240, transmission system structures, and Account No. 278, general office structures? A. Yes, sir, also Account No. 208 and 279, other general structures.

Q. Altogether there are five accounts or five instances where such inclusion has been embraced? A. I think that is correct.

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ARTHUR B. FAVOR, having been duly sworn, was examined and testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Will you please state your full name and occupation?

A. Arthur B. Favor, electrical engineer, employed by Day & Zimmerman, Inc.

Q. Will you state briefly your experience with respect to engineering matters relating to electric utilities, and such experience as you may have had in construction work and along general utility lines? A. Since August 1933 I have been employed by Day & Zimmerman, Inc., in the making of inven-

*Arthur B. Favor—For Respondent—Direct*

tories, pricing those inventories in connection with public utilities; also in making inspections of public utility properties—

Q. For the purpose of approval of S. E. C. bond applications in the Securities Exchange Commission? A. Yes, sir; the larger of these appraisals has been one for the Commonwealth Edison Company of Chicago, Illinois, and in connection with that appraisal I testified before the Illinois Commerce Commission. I also made one for the Western United Gas and Electric Company of Illinois, and one for the Philadelphia Electric Company property. In all of these assignments I was in charge of the sub-station and power house electrical equipment inventory and prices. More recently I have made an inventory and pricing of a property in Syracuse, New York. As to the S. E. C. approval, they involved the Northern New York utility properties, the New England Power properties, the Philadelphia Electric properties, the New York-Edison properties, the Brooklyn-Edison properties, and some others.

Q. With respect to matters before the Securities Exchange Commission, I take it you were assigned to certain phases incident to the preparation of a registration system? A. Yes, sir.

Q. With whom were you associated between 1921 and 1933? A. I was associated with the U. G. I. Contracting Company and its successor, the United Engineers and Constructors, Inc., as construction superintendent.

Q. In connection with your duties in that capacity did you supervise the construction of certain plants and properties in New York State and Pennsylvania, Illinois and other states?

A. Yes, sir.

Q. Give me a few of the generating stations and sub-stations under your supervision while with the U. G. I. Contracting Company and the United Engineers and Constructors, Inc.?

A. When with the U. G. I. Contracting Company I had charge of the plant at Camden, the Indiana Gas and Electric Company. Some of the larger items since then have been the power plant

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at Norristown, Pennsylvania, of which I was electrical superintendent.

Q. What is the capacity of that station? A. Forty-five thousand k v a, one of the ten sub-stations in that vicinity, ranging in capacity from six thousand to ninety thousand k v a, in all of which I was in full charge of construction.

Q. Prior to 1921 you were associated, I believe, with Stone & Webster for a period of time? A. Yes, sir.

Q. In what capacity? A. My assignment with Stone & Webster, as I remember, from 1916, with one or two gaps, up until 1921, and while with them I was electrical foreman on switch-board construction. That is the way I started with them. I finally wound up as electrical foreman, general electrical work.

Q. Mr. Favor, you have been charged with the preparation of the estimates of reproduction cost new and depreciated of the property of the respondent in this case, embraced within Account Numbers 212, 213, 241 and 274, have you not? A. Yes, sir.

Q. Well now, let us refer first to the most substantial of those four accounts, namely item No. 241, dealing with sub-station equipment, estimates for which are set forth in Respondent's Exhibit No. 2, beginning at page 71. Will you tell me first what method you adopted for supervising the inventory of the property embraced within this account? A. I personally made the inventory of all the property involved in this account. My method was to take a pad of paper into the sub-station and actually record the name plate data or sufficient engineering data necessary to accurately price the item. These items or units are listed in uniform order. For instance, I list the heavier equipment first, such as transformers. I will exhaust the transformers before going to another list of equipment. Units are taken up in that fashion until I have listed all of the major equipment in the sub-station.

Q. Having obtained all of the necessary information to put

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you in a position to price such equipment, what method did you then follow in collecting your data to support your estimates as to the unit costs of the property embraced within this account? A. The pricing as shown in Exhibit No. 2 is the total in place price for the units. Those in place prices are composed of three major parts, material, labor and the direct engineering supervision. The material part of the figure I obtained where possible from published lists and catalogues furnished by the manufacturer, with application of discounts which are enjoyed by the respondent. Where the items of equipment are not so listed, I have written to the manufacturer for a quotation, and to the quotations so received or the prices taken from catalogues I have made an allowance to cover the small miscellaneous items, such as bolts, nuts, tape, soldering and so forth, necessary to install electrical equipment, as well as an item to cover freight, where necessary. These three figures are added together and form a total of material price. I might say that the freight is necessary in a very few instances. Most of the electrical equipment is sold delivered. The next item of labor is developed by first applying the number of man hours which my experience has taught me to be necessary to install that piece of equipment, with an efficient crew. These man hours are then multiplied by a figure developed in this particular job, reflecting the rates per hour and working conditions, in order to give the dollars of labor. Those two figures, material and labor, are then added to give the total material plus labor figure. To this is added an amount to cover direct engineering supervision. This direct engineering and supervision in the case of Account No. 241 is applied to each item of equipment and is constant within one sub-station. It may vary in different sub-stations. In other words, I might apply twelve per cent. to one sub-station and another sub-station may have thirteen per cent.

Q. What is the explanation for such price variation? A.

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That is due to the fact that in the construction of this type there are certain sizes and designs of sub-stations which are more or less standard. Those will fall into the lower class, lower rates for direct engineering and supervision. The ones which are not quite so standard require more time for designing and more supervision possibly. If it is a small project this engineering supervision will be slightly top heavy. Possibly it will be a type of sub-station which it is impossible to get into reproduction in installing equipment, and there might not be very many units of the same type. Those things tend to increase or decrease the field supervision. This figure is varied in order to get an answer applicable to each sub-station. That is more nearly correct, than would otherwise be if I had used an average rate on every sub-station.

Q. In other words, you tried to relate the percentage to the particular character of sub-station that you were considering?

A. Yes, sir.

Q. Rather than take some weighted average of all of the sub-stations? A. Yes, sir.

Q. Mr. Favor, you have testified that you have made a great many construction estimates for companies with whom you have been associated in the past or by whom you have been specially employed. I would like to inquire whether the basis on which you have made your reproduction cost in this case is identical with the basis or method followed by you in making the construction estimates? A. Yes, sir. I have made the construction estimates in the same way and I have gone out and built the job and I find it is very satisfactory.

Q. Referring to account No. 274, beginning at page 239, "Other utilization equipment", what has been your method of approach to arrive at your estimates of the cost of material and labor embodied within that account? A. The account consists essentially of capacitor installations on customers' property, the exceptions being three buildings, two



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of them located in hotels, one in the General Supply Company property. The method is the same as I have outlined for the sub-stations because they are miniature sub-stations. Capaciter installations are practically all material items. In that case I have written for and received quotations on all of the electrical machinery, where they manufacture capacitors, and the remaining ones I obtained from published prices with discounts.

Q. As I understand you, with respect to these particular accounts your principal source of obtaining unit costs of material has come from the manufacturers of the materials themselves? A. Yes, sir.

Q. Then you have applied as a necessary part of the cost of installation the labor costs which from your experience would follow in connection with an installation of that character? A. Yes, sir.

Q. Including with labor costs an estimate for the necessary field supervision expenditure? A. Yes, sir, that is not in the labor cost.

Q. Am I right in assuming that the greater part of the labor involved in an installation of this character is skilled labor, or is it the sort of work that could be done by common labor? A. The work involved in these accounts must be done by skilled labor.

Q. Most of that labor would have to be imported by the respondent? A. Yes, sir.

Q. Do you know from your investigation of this case as to whether the respondent actually imported labor at the time it installed equipment of the character you are now discussing? A. Yes, sir. Most of its equipment was built by imported labor.

Q. The remaining accounts which you have supervised are Accounts Nos. 212 and 213? A. Yes, sir.

Q. Without burdening the record with too much detail, did

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you follow the same method in reaching your estimates with respect to the property in those two accounts as you did in the two regarding which you have testified? A. Yes, sir.

Q. That answer goes for both the material cost and the labor cost and the cost of installing of the equipment in place?

A. Yes, sir.

Q. Referring again to Account No. 241, sub-station equipment, will you state how you have arrived at your estimate of accrued depreciation, and especially tell us what factors you have considered in forming your judgment of that depreciation?

A. While visiting these sub-stations for the purpose of inventorying the equipment I also made notes of the type of construction, the design, the maintenance, the observable condition which indicates maintenance, and if there are operators at the station I inquire as to the load conditions at the time. At the time of this visit I form a judgment on the basis of one hundred per cent., as to what condition the equipment located there is in. Later on that judgment is checked, increased or lowered, by the results of my study of those stations for the past several years, and also by whatever I may find out through talking with the officials of the company as to their plans for continuance, increasing or abandoning such equipment. After weighing these items, I apply a final condition figure, which is a percentage based on one hundred, the difference between it and one hundred representing the accrued depreciation.

Q. Do you consider the age and prospective life of a particular unit of property, along with the other factors that you have enumerated? A. No, that has very little to do with it. I pay particular attention to the maintenance. Of course, it is understood if a great deal of this equipment is in operation, it has high voltage connected with, it is impractical to take a piece of equipment apart and examine it, and therefore I rely on the outward indications or appearances which my experience tells me would indicate whether that piece of equipment

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is well cared for, such as the degree of cleanliness, oil leaking around the transformers, all of which is an indication as to whether or not the management is taking good care of the equipment. In addition to making notes and a mental picture of the equipment I take photographs of all the points of interest within and without the sub-stations, which help me to recall later what I have recorded.

Q. You also give some thought to the question of obsolescence in making this estimate? A. Yes, sir, obsolescence has quite a bit to do with the figure which I finally put down, but I cannot say that obsolescence would be the major factor, as Mr. Reed has said because I find that a figure in a sub-station may include only two or three hundred items, and as to some of the items in the sub-station obsolescence may have some bearing, and on other items within the sub-station it would not have any bearing. Therefore, obsolescence is one of the factors in a sub-station which is taken into consideration, along with wear and tear, inadequacy or over-adequacy, and there are others.

Q. Referring to the four accounts with respect to which you have been testifying, will you give me the estimates of the reproduction cost new and depreciated for the property embraced within each of those four accounts, beginning with Account No. 212? A. Reproduction cost new is \$147,718; depreciated it is \$85,407.

Q. Account No. 213? A. Account 213, new it is \$277,508; depreciated it is \$180,380.

Q. Account No. 241 relating to sub-station equipment? A. Account No. 241 new is \$465,883; depreciated it is \$434,432.

Q. Account No. 274 relating to other utilization equipment? A. Account No. 274 new, \$34,359; depreciated \$26,529.

*Arthur B. Favor—For Respondent—Cross**Cross Examination.*

By Mr. Miller:

Q. What depreciation percentage did you apply in Account No. 212? A. In Account No. 212 I applied to the bulk of the equipment thirty-five per cent. depreciation. However, there is one item in that account, which is an engine driven generator which was separately depreciated, and this was because this engine is not being used, and I depreciated it to zero. The balance of the equipment of that account is depreciated thirty-five per cent. The depreciation for the account as a whole is approximately forty-two and two tenths per cent.

Q. As to Account No. 213 what was the depreciation percentage? A. Account No. 213, it is depreciated thirty-five per cent.

Q. Account No. 241? A. Account No. 241 was depreciated by stations, the weighted average for the account being seven per cent.

By Mr. Miles:

Q. But the percentage of depreciation for the various stations differed? A. Yes, sir.

By Mr. Miller:

Q. Take Account No. 274? A. That was depreciated by locations, the weighted depreciation for the Account being twenty-three per cent.

Q. Those percentage figures, I presume, would furnish no basis for a computation of the annual depreciation allowance? A. No, sir.

Mr. Miller: That is all at the present time.

Adjourned until to-morrow morning at 9:30 o'clock a.m.

*Theodore E. Seelye—For Respondent—Direct*

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Thursday, February 18, 1937.

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Commissioner STAHLNECKER, Presiding.

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APPEARANCES:

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For the Public Service Commission

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DAVID I. McCAHILL, Esq., Pittsburgh, Pa.

For the Edison Light and Power Company

V. K. KEESEY, Esq., York, Pa.

For Edison Light and Power Company

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For Edison Light and Power Company

T. E. SEELYE, recalled.

*Direct Examination.*

By Mr. Miles:

Q. Mr. Seelye, you have heretofore testified with respect to certain phases of your past experience incident to the operation of public utility companies. I should like to inquire at this time as to whether as a part of that past experience you have been Treasurer or otherwise charged with the accounting control of public utility companies? A. Yes, sir, I have been Treasurer of a number of public utility companies, and have been responsible for the accounting control and reports to the board.

Q. Now, Mr. Seelye, in Respondent's Exhibit No. 2 with respect to reproduction cost new undepreciated on this property are certain property accounts denominated as undistributed construction expenses, a summary of which appears in the

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exhibit, now, I refer you first to Account No. 200 entitled organization, for which you have included in your estimate of the reproduction cost new the sum of \$68,812.00, and ask you what items or increments of value are included in that account number?

A. The items which were included in that account number, organization, that is, 200, are set forth in the uniform classification of accounts of the Public Service Commission, and include the cost of preliminary work preparatory to the securing of charters, and includes expenses incident to securing certificate of convenience to serve the various territories which the company proposes to serve. I have not in considering that feature of it assumed that there would be any contest in connection with the securing of the certificate, I simply say expenses involved in doing that. It includes the cost of preparing information necessary to secure the initial financing of the company, which would include the cost of registration under the Securities and Exchange Commission. It includes bonus, fees and other expenses in connection with securing charters of the company, and such legal fees as are related to these matters. The item of Securities and Exchange Commission which I mentioned, I previously referred to the Commission's Uniform Classification of Accounts, the item of Securities and Exchange Commission is not included in the Uniform Classification of Accounts I think at any place at the present time, is only a new cost which has come into the cost of obtaining money only in the last year or two.

Q. Now, in other words, as I understand your reply, you have included within the purview of this item the expenses allocable under the accounting rules of the Commission, whether such expenses relating to the legal or engineering expenses, and you have also included all expenses incident to the compliance with state or federal laws and regulations? A. Yes, sir.

Q. Mr. Seelye, have you personally had any experience in connection with the operation and filing of registration statements with the Securities and Exchange Commission? A. Yes, sir. Day and Zimmerman have participated in a good many bonding operations on the part of utility and industrial companies. Our part in these matters being devoted to the en-



*Theodore E. Seelye—For Respondent—Direct*

gineering studies necessary to serve as answers to questions 5, 6 and 7 on the registration certificate which refer to the matters of description of the property, the business of the company and so forth, its earnings and other matters of that character. In connection with these matters we have conferred with counsel for the company, and with officers of the company that happened to be involved, and we are familiar in general with the costs which are incurred inasmuch as the costs are enumerated and stated on the certificates themselves by the law, I believe. I believe that many companies have expenses in connection with the registration under the Securities and Exchange Act which do not appear on the certificates because it is performed by members of the staff who may not charge their time, but of course, in connection with a company newly organized it would all have to be charged that way because there would be no other account to charge it to. The cost of this registration ranges from possibly a half percent to two and a half percent or more percent of the amount of the issue. The majority of those with which we have had anything to do seem to run in the neighborhood of one percent, they are mostly large issues, and a smaller percentage as the size of the issue goes up.

Q. It is a fact, is it not, that the form which must be filed with the Securities and Exchange Commission in order to register an issuance of bonds is precisely the same no matter what the principal amount involved of the issue happens to be? A. Yes, the same questions must be answered in any event and the responsibility of the officers of the company is not in proportion to the amount of money, it is the same in any case.

Q. Now, in arriving at your estimate of expenses attributable to this item, that is, the organization expense, have you assumed that the respondent would procure the necessary approval of this Commission or any other political subdivision of the state of Pennsylvania authorizing it to engage in its business without any contest? A. Yes, sir, I presumed that, and I think as I stated a few minutes ago, that the certificate of convenience would be obtained in an entirely routine way with-

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out contest. I don't think you can estimate in advance the possibility of a contest, or what it would cost, because there is no possible way to do that, so we cannot say that.

Q. Now, have you included within the item any expense incurred by the respondent in connection with negotiations for obtaining a franchise authority from the various political subdivisions served by it? A. No, sir.

Q. Has your investigation as to actual organization expense of the Edison Company disclosed that it did actually incur any such expense incident to the procurement of its franchise? A. I understand that there are instances indicated in the minutes of the company where expenses have been incurred in connection with the securing of franchises, but we have not made any allowance for that in here.

Q. Referring next, Mr. Seelye, to Account No. 288—

The Commissioner: Mr. Miles, in that Account No. 200, is there any tabulation of the figures which make up this \$668.12. There is not any other account here, as I understand it, but I don't see anything in this volume as to that.

By Mr. Miles:

Q. Have you any breakdown, Mr. Seelye, of the amount allocated to organization expense under reproduction cost new and depreciated? A. I have not. The figure which we have there is based on a percentage of the direct costs. We can, if the Commission desires, prepare some supporting data to show the basis of our judgment on that.

By the Commissioner:

Q. It is what percentage? A. It is one and a half percent of the direct costs.

Mr. Miller: I was going to cross examine Mr. Seelye in some detail on that.

(Further remarks by Mr. Miller at his request off the record.)

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The Witness: I was going to say that this information would not be in the form of an exhibit; it would be information to show the things which were considered in connection with the development of a judgment, because actually it would be too highly theoretical to set down any specific numbers because of the great many things which you have to consider in organization expense.

The Commissioner: I didn't mean that.

The Witness: Probably that would all total up far more than this.

By the Commissioner:

Q. I meant, to show how you arrive at the figure on which you take one and a half percent? A. Oh, yes, all right. I can produce that very quickly, sir.

By Mr. Miles: .

Q. The one and a half percent is shown in the direct cost shown on this Exhibit No. 2, is it not? A. That is right.

Q. Suppose we put it this way for the record: It is one and a half percent of the total made up of the accounts shown on page 1 of the exhibit beginning at 204 and ending at Account No. 286? A. That is right.

The Commissioner: That is what I wanted to know.

The Witness: In other words, applied against the sum of \$4,587,476.00.

By Mr. Miles:

Q. Referring next, Mr. Seelye, to Account No. 288, covering expenses incident to engineering, expenses during construction, will you state precisely what items of expense are in your opinion properly included within that account number? A. The item of engineering expenses during construction is the expense incurred by the owner, or by the company itself aside from the construction cost, for the cost of its engineers, engineering expense in the preliminary studies preparatory to the commence-

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ment of construction until the completion of the work, including general supervision and general coordination of the activities in the field.

Q. Now, what are some of those preliminary engineering matters that are involved in that expense, of course, of the particular company in question? A. Prior to the commencement of construction it must be obvious that it is necessary to decide what to build. In order to arrive at such a conclusion studies are necessary; studies of the territory to be served and so forth, population studies and so forth. Those studies should also include industrial studies to determine the requirements of the company from a capacity standpoint. There would also be studies for the determination of load centers in order to decide on the location of the main transmission lines and sub-stations and generation. There would be location sites for generating stations. Various problems might enter into that, such as water supply and other things; the availability of sites in connection with the necessity for locating them within the proper distance from the load or whatever the determinations from an engineering standpoint might require from the standpoint of location. There would also be an investigation to determine the desirability of the purchase of power, or the source of energy which might be purchased, and where this energy should be fed into the system if it is purchased. There would also be studies to determine the availability of sites for generating sub-stations. It is not possible to buy any site, or buy eminent domain right on the part of the company any place it choose, except possibly at time at an exorbitant cost you might find a situation which you don't have to condemn, if possible, unless there is something which requires, from the standpoint of the public, absolute necessity of acquiring the site by condemnation. There would be studies for the determination of capacities of plants and the load requirements. There would be a determination as to the type of the generating station; what units would be used, and other matters in relation to the general design of the station. The engineering staff of the company, the owner would at that time determine the type of de-

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sign for transmission or distribution system, overhead and underground, and cost estimates would have to be prepared for the purpose of permitting arrangements of financing. For the general arrangement on these general matters it would be necessary at the same time to make a recognizance of the service in the case of transmission lines and location surveys. These would not be the final locations for the poles as would be made by the construction organization, but it would be to determine the location of the line, so that the land department could acquire right of way if necessary, or the easements.

Q. Is it your opinion, Mr. Seelye, that these various necessary expenditures to which you have just referred and which embody the various items making up the total of Account No. 288 are actual expenditures, the outlay of which is incurred in cash, by companies organized to engage in business similar to the respondent? A. Yes, sir, all of these expenses are outlay of cash. After a property is constructed and in service there are a good many costs which are incurred which never can be seen again. For instance, if you have a brick building you can never see the labor in it, or the scaffolding, or the equipment which erected it, and just the same even if you took the building down you could not find anything for it, but it is there, actually those costs are there. They are required to construct the plant, but you have no evidence of them after the work is completed.

Q. Now, counsel for the Commission at various stages of this case has interrogated witnesses for the respondent with respect to the expenditures included in field supervision and expenses in the direct property account. I should like to inquire whether any of the expenses allocable to such field supervision and expenses have been included in any way within your estimates of engineering, superintendence and construction in Account No. 288? A. No, they have not. Let me express it this way: In setting up this reproduction cost we have assumed that the company would set up a construction organization instead of letting the work by contract. In other words, it would do the work itself. If we turned this work over to a construction company, the type of which exists in a good many instances who



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will undertake to do the detailed engineering and construction, that is the type of construction organization that would be best suited to do this sort of work. They would receive from the Chief Engineer's office, whatever his title may be, instructions with respect to what he wants to build. He desires to build a generation station on Pershing Street of such and such a capacity; boilers of such and such a capacity, whatever electrical characteristics might be desired in connection with the design of the station. That is what they could expect in somewhat more detail than I have recited, and they proceed to make the detailed drawings and prepare to construct. The biggest job of engineering is not the pencil and paper job of making the design for the anchor bolts, for the turbine, it is to decide what kind of turbine to buy, and that is the job which is done by the Chief Engineer or the owner who decides what he wishes to build, which is the perfectly logical thing for him to do in any event and the construction organization proceeds to make the detailed design for it and to build it. I am discussing that at some length because of the fact that it is the soundest approach. We could, as is done in many instances, take these field expenses and increase our unit cost by that amount, and never mention them again. We prefer to show everybody what we put in, and it does occasion discussion at times, but we think it is the right way to do it, and that is exactly what would be done if this company set up its engineering organization and its other staff in the headquarters of the company and let the contract to some good construction organization. That is just what will be charged to the costs which we enumerate field, office and construction, are the things which would be borne by the construction company and not by the electric company itself, and it would be paid for by them as part of the bricks, wire and poles that went into the system.

Q. Various costs embodied in engineering expense during construction is the company's cost over and above that of the contractor? A. Over and above the contractor, that is right.

Q. Now, without repeating again what has definitely been stated by one or two witnesses, but because it is relevant to this



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discussion, isn't it a fact that the only profit for a contractor included anywhere in expenses in Exhibit No. 2 is in connection with the erection of building structures? A. Yes, that is right. The reason for that is that normal procedure in constructing this property would be to sublet the building construction, the general contractor undertaking this construction of this building would sublet a large part of the work to sub-contractors, and that is what would be done in an instance of this character. It is a specialized line of work which requires specialized trades, and the proper type of sub-contractor could do it right and cheaply.

Q. Of course, no part of that is involved in Account 288? A. No.

Q. I refer to Account No. 289, which is known as general officers' and clerks' salaries during construction. Please state precisely what character of expenses are included within that item? A. During the course of construction which includes a period sometimes prior to the actual beginning of construction until it is completed the company is a corporation with corporate requirements as well as the job and duty of administering the expenditure of about \$5,000,000.00, more or less, for the actual construction of the property. This organization is charged with the responsibility for financing the project as it goes along. It is charged with the responsibility for company records, and generally speaking, for supervision from an administrative standpoint only of the expenditure of about \$5,000,000.00 or more. The amount which we have shown here of approximately \$45,875.00, or approximately \$23,000.00 a year seems modest enough for the staff which would be required in connection with the expenditure of this amount of money.

Q. Now, Account No. 290 has to do with the general officers' and clerks' expenses during construction. What is the distinction between that and Account No. 289 which you have just mentioned, relating to general officers' and clerks' salaries during construction? A. Well, that includes the rental of offices and expenses of that character and expenses incurred, traveling expenses, if any, transportation expenses of various kinds.

*Theodore E. Seelye—For Respondent—Direct*

Q. Account 291 relates to office supplies and expenses during construction? A. Yes, sir.

Q. Will you tell us what you have included as properly allocable to that item? A. That includes telephone, telegraph expenses, stationery, matters of that character. It is a small item.

Q. Mr. Seelye, the propriety of an inclusion of something for all of these various overhead accounts is recognized in the Commission's Uniform System of Accounting, is it not? I am not suggesting now that they are committed to any specific sums, for any one or more of the items, but is it not a fact that their system of accounts recognizes expenses of this character? A. Well, yes.

The Commissioner: If that were not so there would be no account number.

The Witness: That is exactly right, my answer.

Mr. Miles: That is true, Your Honor, but sometimes that policy circulates the fact that it is a way of abating property values.

The Commissioner: The only question that there can be as to these items is as to the question of percentage.

Mr. Miles: That is precisely what we were trying to develop.

By Mr. Miles:

Q. Now, referring to Account 292, relating to law expenditures during construction, what is embodied within that item?

A. That account is to cover the legal expenses during the period of construction. It does not include legal expenses having to do with the organization of the company, but it relates to such expenses as might be brought about by the review of contracts and other matters of that sort, for purchase of materials. In the expenditure of that much money it seems inevitable, and I think from my experience I know that it is inevitable that during that period there will be some litigation. We cannot tell in advance what it may be, but experience indicates that it amounts

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to something during the course of construction. If we knew before hand what the litigation would be we would immediately take steps to prevent it from happening, so we cannot describe very accurately what amounts, or what thing might cause expenditure, but we know there is a legal expense during the course of construction, or the expenditure of that much money over a two year period.

Q. Mr. Seelye, passing next to Account No. 293; what character of expense is included within that item called injuries and damages during construction? A. Our principal costs include compensation insurance, property liability insurance. This item, however, is to cover costs which may be beyond the insurance coverage. It covers suits for damages to abutting property which might be caused by construction which is not covered by public liability. For example, property damage due to the introduction of a generating station or a transmission line; nuisance damages and other things of that character during the course of construction. A construction work which is spread over as wide an area as this is, and comes in contact with so many thousands of the public, must necessarily become involved from time to time in minor litigation.

Q. Well, expressed in a sentence, it is expenses that would be incurred in the payment of claims resulting from personal injuries or property damages, not included within the coverage of insurance policies. The next account number is 294, relating to insurance during construction. Will you state what is embodied within that item? A. That includes insurance paid by the owner for fire insurance, public liability insurance in connection with the company's own staff, as well as compensation insurance.

Q. That comprises the insurance premiums required during the period of construction? A. Yes, that is right.

Q. Now, I think it is perfectly appropriate to inquire at this time as to what period of construction you have assumed in your reproduction cost estimate? A. That is a two year construction period.

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Q. So that this insurance, for instance, would be probably the amount of insurance over a period of two years? A. That is right.

Q. We start out at some sum and increase as the investment increases? A. Yes, sir.

Q. Now, the next account, Mr. Seelye, included in these overheads is Account No. 295, relating to taxes during construction. Will you state just what taxes would necessarily have to be paid during that period? A. That would be a certain amount of real estate taxes prior to dedication to public service. The acquisition of real estate would have to be made some time prior to its use; sometime prior even to the beginning of construction. That is one item of taxes that would be during the time of the company's construction period, capital stock tax. There would be likewise the old-age pension tax and the social security tax which we have not included in the direct cost of construction on the organization which would be engaged in constructing the property.

Q. So that the taxes are made up of the nine mill tax payable to the state of Pennsylvania in connection with unemployment insurance, the social security tax resulting from the application of the federal law, the capital stock tax and the normal real estate tax? A. That is right.

Q. Now, referring next to Account 296, you have included under reproduction cost new for this account covering interest during construction the sum of \$305,526.00, and it is substantially the largest of all of the items in the overheads. Will you state how you arrived at that estimate for this item? A. The basis of a two year construction program, and with interest at six percent on money borrowed for the purpose of construction, the interest during construction over the two year period at the average rate of six percent would be six percent on the total amount, and we apply that to the direct costs, to the overhead accounts except Account 296, interest during construction, or a total amount of \$305,526.00.

Q. In other words, that percentage of six percent is applied against the aggregate on the reproduction cost estimate em-

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bracing the property within Accounts 200 to 295 inclusive?

A. That is right.

By the Commissioner:

Q. Six percent of the total amount for one year? A. That is for a two year construction period, that is an average.

Q. Six percent for one year on the total amount? A. That is right.

Q. Or an average of three percent per year on the cost of construction, that balances it out? A. That is right, yes.

By Mr. Miles:

Q. Mr. Seelye, we have covered all the general overheads enumerated in this summary of Respondent's Exhibit No. 2, relating to undistributed expenditures except the item which you have listed thereon, commonly known as cost of financing. I think you have previously testified with respect to your experience in connection with the construction and management of public utilities engaged in the generation and sale of electric energy. I should like to inquire whether you have formed any opinion as to the amount of expenses that would be incurred in connection with the cost of financing, of the amount that should be properly included in the company's—in any estimate of the reproduction cost of the property of the company? A. We have made a determination of the cost of financing. In our judgment it is five and a half percent of the total reproduction cost of the property of the company. This includes the cost of financing, not only for the bonds, but for other securities which might be issued. This company has at present approximately \$1,000,000.00 of notes which they have deposited as collateral under the York Railways mortgage, and the balance of its capital is in common stock. The company's cost of financing bonds should be less than the cost of financing common stock. In connection with my experience in recent years I think that five and a half percent is a reasonable amount to allow for cost of financing involving all of the capital requirements of the company.

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Q. Just what is included within that item? A. Preliminary expense involved is represented by the company's actual experience in connection with the certification of the issues, the mechanical expenses of preparing the securities. The largest item of expense would be perhaps the discount rather than the expense, depending upon the circumstances at the time the mortgage was issued. I mean the issue was marketed, this company I feel satisfied would have to pay a discount on all of its capital, probably of not less than three or three and a half percent. I refer now not bonds, but to all of its capital which it must raise. In other words, it would probably pay less on its bonds and more on its stock issues.

Q. In other words, that is the average discount? A. That is the average discount. I have made studies in connection with members of our staff and at various times, we have made a good many studies of the cost of financing various companies, and they range over a very wide range. We find that seven percent is a very common result when we can make an historic study of the cost of financing, and in many instances it is not possible to determine historically what the cost of money was to the company.

By the Commissioner:

Q. The cost of financing normally on the average is greater in proportion for small companies than for large companies, isn't it? A. Yes, sir, it is.

Q. Assuming that they are both sound? A. That is so.

By Mr. Miles:

Q. In other words, there is not as much market information, so to speak, on the securities of smaller companies, isn't that a fact? A. That is right. The amount of the security and the breadth of the market and breadth of distribution is less than for large companies.

Q. And the liquidity of the security is more? A. Many banking houses refuse to accept an issue under a certain size, not



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because of lack of soundness, but because the public will not buy it, because they have no ready market for it.

Q. My recollection is in a merger case involving the respondent and the York Railways Company which was heard by this Commission in 1935 your organization prepared an exhibit in which the cost of the financing of the respondent in that case and in this case was there estimated at seven and a half percent, which is two percent more than you are now suggesting for inclusion. Will you state why you now propose a lesser cost of financing by the respondent than you advocated in 1935 in the merger case? A. Primarily the reports submitted in the merger case were for the purpose of determining the relative values or relative costs to reproduce the properties of four separate companies for the purpose of merger. It was not a determination on a rate basis, and the cost of financing it will be noted in that report is the same for all of the four companies included in the report. In this report which we have submitted here we have included no cost of financing for the Railways Company or the Bus Company.

Q. Now, were there not only two companies involved in that 1935 cost, that is the Railways and Electric Company? A. And the Electric Company, but the Railways Company operates and directly owns a Bus Company, so that it is the same company. We have eliminated the cost of financing in our report here as of this date of the Railways Company and the Bus Company. Those two companies are neither of them earning a return of any kind. In other words, they are running in the red, they are losing money in operation and obviously under the circumstances a judgment as to the cost of financing the property would be meaningless. You would not be able to finance it all, so we have omitted that from the Railways Company, and we have included in the Electric Company and in the Steam Heat Company, both of which are earning a net revenue, an allowance of five and a half percent cost financing.

Q. Now, isn't it a fact that the cost of money is substantially less now than it was in 1935? A. The cost of money is much less than it was in 1935.

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Q. Is it reasonable to assume, in other words, that there would be the same figures on the cost to the respondent of financing now and what would have been the situation in 1935?

A. Yes.

By the Commissioner:

Q. The cost of financing indicated here is the cost of financing the property of the Edison Light and Power Company only?

A. That is correct.

The Commissioner: We are dealing now only with the one company.

By Mr. Miles:

Q. I wanted to confine it to the Edison Light and Power Company at the moment? A. The cost of money is less now than it was in 1935.

Q. Mr. Seelye, what observations have you made with respect to the depreciation that has been charged against your estimates of the reproduction cost new under undistributed construction expenditures? A. We have determined from the depreciation set up under each account of a direct cost the weighted average as applying to the direct cost of the entire property, we have depreciated the overhead accounts of indirect costs, Accounts 288 to 296, and included the cost of financing in the same percentage as that which was applied to the direct cost of the physical property. Organization expense has been likewise depreciated—I don't think it should be, that is a mistake—it is an immaterial amount so we won't bother with it.

By the Commissioner:

Q. Is the percentage the same on the depreciation there on indirect costs, is the same weighted average used? A. The weighted average is applied to the whole of Accounts 204 to 286.

By Mr. Miles:

Q. Now, for the purpose of the record, Mr. Seelye, will you state the reproduction cost new and the reproduction cost new

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less accrued depreciation, included on Respondent's Exhibit No. 2 for each one of the accounts with respect to which you have been testifying. First Account No. 200 entitled organization? A. Account No. 200, organization reproduction cost new \$68,-, 812.00.

By the Commissioner:

Q. Depreciated? A. Depreciated \$60,364.00.

Account 288, engineering expense during construction \$206,- 436.00 new and \$181,093.00 depreciated.

Account 289, general officers' and clerks' salaries during construction \$45,875.00 new and \$40,243.00 depreciated.

Account 290, general officers' and clerks' expenses during construction \$34,406.00 new and \$30,182.00 depreciated.

Account No. 291, office supplies and expenses during construction \$11,469.00 new and \$10,061.00 depreciated.

Law expenditures during construction \$22,937.00 new and \$20,121.00 depreciated.

Account No. 293, injuries and damages during construction \$45,875.00 new and \$40,243.00 depreciated.

Account No. 294, insurance during construction \$22,938.00 new and \$20,122.00 depreciated.

Account No. 295, taxes during construction \$45,875.00 new and \$40,243.00 depreciated.

Account No. 296, interest during construction \$305,526.00 new and \$268,018.00 depreciated.

Discount and expenses, cost of financing, \$296,869.00 new and \$260,424.00 depreciated.

Q. Mr. Seelye, Mr. Bierman, a witness for the Commission, has testified that in his opinion certain of the overheads suggested by Day and Zimmerman in the 1935 merger case should be reduced in arriving at the reproduction cost new of the property. Now, in connection with my questions it is necessary for me to make the record clearer by stating that Mr. Bierman for the purposes of his testimony in this case and the reproduction cost new stated that the reproduction cost estimate of Day and Zimmerman in 1935 allows—

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Mr. Miller: 1934.

By Mr. Miles:

Q. 1934, allows certain deductions from their properties by Mr. Palmer in connection with the generating facilities, and allows a further reduction which he thought should be made in these overheads. I should like to inquire whether you have any observation with respect to Mr. Bierman's testimony as to the proposed reduction of these general overheads? A. Mr. Miles, I don't like to comment on Mr. Bierman's testimony. I think that the method of setting these up by accounts is clearer,—it is clear to me. I know the method which he has followed is one which we in the past followed ourselves in setting that up, it was something that came with the business years ago and was followed until recently more or less. I think by setting it up by accounts you have a truer picture of the division of these things than you would have by setting them up in two or three different items.

Q. So that the record may be clear, do I understand that Mr. Bierman combines all of these general overheads in some three or four items? A. Yes, sir, that is right.

Q. And didn't allocate them or divide them to property accounts? A. That is correct.

Q. So that the overheads with respect to which he testified were not distributed between the account numbers prescribed by the Commission in its regulations? A. Generally they are not comparable with the figures in this report.

Q. Is it possible or practical to make a comparison between the overheads as offered by Mr. Bierman and those set forth here in Respondent's Exhibit No. 2? A. No, sir, I don't think so.

Q. Mr. Seelye, by way of concluding your testimony will you state for the purpose of the record the total reproduction cost new of the property of the respondent as shown on this Exhibit No. 2 exclusive of working capital and going concern value? A. The total reproduction cost of the physical property of the Edison Light and Power Company on prices as of about No-

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vember 30, 1936 was \$5,694,494.00 new and less accrued depreciation \$4,995,406.00.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Now, Mr. Seelye, in Account No. 200 in Respondent's Exhibit No. 2, which is organization expense and constituting one of the general overheads with respect to which you have been testifying, accrued depreciation has been charged against reproduction cost allocable to that item, and I should like to inquire whether that was an inadvertent error? A. It was.

Q. You desire to have it understood, therefore, that the company can later substitute Sheet 1 of this exhibit for the Sheet 1 that is now contained in the exhibit, said substitution to be exactly as this page except that the cost as shown opposite Account No. 200 will be shown at \$68,812.00 reproduction cost new without any accrued depreciation, and the totals at the bottom of the page of reproduction cost new less depreciation will be adjusted accordingly? A. That is right.

Mr. Miles: Your Honor, we ask leave to be permitted to do that.

The Commissioner: Very well, that may be done.

Mr. Miller: We have no objection. We think it should be done.

Mr. Miles: We cannot do it during the day, these are photostatic copies.

By the Commissioner:

Q. What it amounts to is the cost less accrued depreciation would be increased about \$8,450.00? A. That is right, yes.

Q. Mr. Seelye, if my arithmetic is right, on your reproduction cost new, your indirect costs, the total of your indirect costs is about, as I gather it, twenty-two percent of the direct cost? A. Including the cost of financing?

Q. Yes, including all the items undistributed? A. The item of the total indirect cost is \$907,018.00.

*Theodore E. Seelye—For Respondent—Cross*

Q. That is a little better than twenty-two percent of the direct cost. I am not saying that that is the proper way to get at it, but that is about what it appears to me to be there, is that correct? A. That is correct, sir.

By Mr. Miles:

Q. But the figure which the Commissioner has just used as a percentage includes the cost of financing, doesn't it?

The Commissioner: Oh, quite.

The Witness: That is right.

*Cross Examination.*

By Mr. Miller:

Q. Mr. Seelye, you said that you have recently revised your setup of these indirect costs. When did your organization begin to use the setup which you have used in Respondent's Exhibit No. 2? A. We first used that in a report prepared in December of 1933 in connection with a rate case before the Illinois Commission. We prepared that, of course, not in that form, but according to the Illinois Commission's classification. In 1934 while that work was still in progress in Chicago the report in the merger case was gotten up by an entirely different group of men and for that reason they didn't follow the same thing which we have subsequently followed in all of our reports.

Q. Well, at the present time as I understand it you use the classification of accounts of whatever regulatory body your organization is appearing before? A. That is right, yes.

Q. And in no case, or in very few cases, I assume, would these setups be comparable with each other? A. No, in some—a good many of the Commissions use the same classification. That is to say, I think the Maryland Commission's classifications numbers; the New York Commission and the Illinois Commission are the same—

Q. It depends? A. It depends on the Commission. In other words, appearing before a particular Commission we feel it is better to set it up according to their particular classification



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than to adopt one of our own which we might attempt to make standard for all the Commissions where we appear, and it is just as well to make these studies in connection with these particular Commissions' accounting procedure, rather than to assume to use some other one.

Q. You would not say that the setup used in your 1934 report was wrong, would you? A. The setup, I don't say that it is wrong, no. We adopted that form I think probably—I don't know whether anybody else used this method of setting it up by classification, perhaps they did, but we did it because we think it is more representative and more clearly defined than a mere statement of administration and taxes, because under this system we put ourselves in accordance with the complete definition of the account as set forth in the classification, and we think that is more informative generally. Where we vary in any way from the classification we attempt to explain it either by testimony or in some paragraph that we set up for the purpose of its exposition.

Q. However, the method of setting forth the indirect costs used by Mr. Bierman is a generally accepted method among engineers? A. It has been used for a great many years.

Q. Now, take Account No. 288, what percentage figure did you use, or did you apply rather to the direct costs to obtain the \$206,436.00 figure for engineering and expenses during construction? A. Four and a half percent.

Q. And what depreciation percentage did you use to reduce the amount of that to \$181,093.00 depreciated? A. I will have to compute that for you, Mr. Miller.

(Remarks by Mr. Miller at his request off the record.)

Mr. Miles: I would like to have, if your Honor please, a statement of the percentages by which each one of these items has been depreciated.

Mr. Miller: Yes, I was going right down the line to get the percentage of all to determine the new figure, and the percentage of depreciation applied.

The Witness: All right, we will get that for you.

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The Commissioner: You are entirely satisfied to have that done?

(Remarks by Mr. Miller at his request off the record.)

The Witness: It is about eleven-percent roughly for the whole thing.

By Mr. Miller:

Q. Is the Edison Light and Power Company registered with the Securities and Exchange Commission? A. No, I don't think it is.

Mr. Miles: I don't understand your question.

Mr. Keesey: No company is registered with the Securities and Exchange Commission.

Mr. Miller: Well, it registers stock issues.

The Commissioner: It has not issued any securities since the Securities and Exchange Commission was created, therefore, it has not been before it.

Mr. Keesey: That is correct.

Mr. Miller: That is what I wanted to develop.

By Mr. Miller:

Q. Mr. Seelye, have you made any investigation to determine the actual experience of the respondent company in obtaining money? A. We have been attempting to, but we have not succeeded in developing a satisfactory result from the information which is available. We may be able later if we can find sufficient data to present an exhibit showing the actual cost of money to this company.

Q. You would think that would be a relevant matter in determining the cost of financing? A. Well, I think it would not be a relative matter in connection with determining the cost of financing today.

By the Commissioner:

Q. You say it would or would not? A. It would not.

*Theodore E. Seelye—For Respondent—Cross*

The Commissioner: I quite agree with you.

The Witness: But I think it would be relevant maybe in connection with the original cost of the property.

By Mr. Miller:

Q. Now, in your cost of financing item you state discount and expenses (cost of financing). Is that discount as stated?

A. Discount is—I may say that that total is used because of the fact, under the classification of accounts for deductions from income there is an item of discount and expenses which defines that average reserve may be set up and amortized over a period of years. We have described this as discount and expenses in here, and we explain it parenthetically as cost of financing for the purpose of tying it in with the classification only. Discount is discount which bankers would exact for the cost to reimburse them for their expenses and profit in connection with handling the issue.

Q. Is that usually referred to as discount or as commission, Mr. Seeley? A. The discount is usually regarded as the amount below par for which the securities are sold.

By the Commissioner:

Q. It is the difference between the amount or rate at which the security is offered to the public and the rate which the bankers pay for it from the company, is that correct? A. That is true too.

Q. And it is commonly called discount? A. Yes.

By Mr. Miller:

Q. Is that the sense in which you use the word discount here? A. That is right, sir.

Q. And what percentage did you use for that discount? Can you divide, in other words, your cost of financing? A. That estimate of five and a half percent for cost of financing is an estimate for the cost of financing for discount and expenses for all of the securities of the company, whatever form they might be in. It must be assumed that under the most favorable con-

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dition this company, if it was soundly financed, would have a bonded ratio of probably not to exceed sixty percent, and possibly less. As it happens the actual conditions are that it has no bonds outstanding, but about a million dollars of notes which could probably be funded. In fact from a soundness standpoint they undoubtedly could be funded.

Q. You mean funded as bonds? A. Yes, as bonds. The balance of the capital of the company is in the form of common stock. Common stock normally requires a higher discount in percentage than first class first mortgage bonds do.

Q. When you say discount now, do you mean brokerage commission? A. Brokerage commission, yes.

Mr. Miller: That is all I have at the present time, Mr. Commissioner. I would like to ask Mr. Seelye a few other questions a little later.

The Commissioner: We will take a recess for five minutes.

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AFTER RECESS.

T. E. SEELYE, recalled.

*Cross Examination.*

By Mr. Miller:

Q. Can you break down Account No. 200, Mr. Seelye, to show me what you placed in that account as the ordinary cost of obtaining a certificate of public convenience? A. To include the cost—

Q. To show that cost I understand you include other things in that account? A. That is right, yes. Would you like to have a breakdown?

Q. I would like to have a breakdown for your figures for that account? A. I wish to say about these overhead accounts that the data which we can prepare for you, which I can let you have, to show a breakdown for this would not be a group

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of figures which would total \$68,000.00. In other words, it would be the data on which a judgment was based in arriving at the amount which is in this report, and I can say that having participated in organizations and in new company business on a number of occasions that the amount of money provided by estimate in advance for the company's costs in these connections is invariably much too low, and I don't believe that an estimate can be prepared in advance which would come out to the end, with the period after it, as the accurate result which you anticipate. My experience as I said is that they are almost invariably too low, and in many meetings in which I have sat, after giving a statement as to what the cost would be in connection with getting business started, the financial men have said let us double that, because they know perfectly well that it costs always more than you figure.

By the Commissioner:

Q. At least you can tell us how you arrived at the figure of \$68,812.00? A. Exactly. I wanted to make it clear that this is not a summation of a lot of dollars which comes out to \$68,000.00.

Mr. Miles: By the same token can we ask that Mr. Bierman prepare a similar statement showing how he arrives at his estimates of overheads.

Mr. Miller: Well, I thought that Mr. Bierman's cross examination covered that, Mr. Miles, but I see no objection.

Mr. Miles: I make the former request then, if I can, Your Honor, that Mr. Bierman supply us with a similar statement.

The Commissioner: Well, I see no reason why Mr. Bierman should not also show in this record how he arrived at his calculations, whether it is by percentage or some other method as to indirect cost.

Mr. Miller: Mr. Bierman informs me that he applied the percentages which in his judgment would give a proper figure.

*Colloquy*

The Commissioner: Then he can state what those percentages were.

Mr. Miller: They have been indicated in the exhibit, Mr. Commissioner, that we introduced in evidence.

Mr. Miles: I don't understand that, Mr. Miller. As I understand Mr. Bierman's testimony he merely adopted the overheads of Day and Zimmerman in 1934 in the merger case and said, "In my opinion they are X per cent, but I——"

Mr. Miller: That is correct, Mr. Miles.

Mr. Miles: But I am asking you that Mr. Bierman furnish us exactly what you are asking that Mr. Seelye furnish you, namely, a statement of how he arrived at these percentages of the items that he included within it.

Mr. Miller: That is all in his testimony, Mr. Miles.

Mr. Miles: I am not debating with you.

The Commissioner: Can't we solve this by discussion off the record between Mr. Miller and Mr. Miles?

Mr. Miles: All right, sir.

The Commissioner: Anything that you want, Mr. Miles, that is pertinent as to how the Commission arrived at any figures that they offered in the testimony I shall see that you get.

Mr. Miles: Suppose Mr. Miller and I talk about it.

The Commissioner: I suppose Mr. Miller has no objection to that.

Mr. Miles: Now, if Your Honor please, before proceeding further with the respondent's case, Your Honor will observe that respondent Exhibit No. 2, which is the exhibit on the subject of the reproduction cost with respect to which all of the witnesses yesterday and today have been testifying, is made up in four parts. One part dealing with the reproduction cost of the respondent's property; the second part dealing with the reproduction cost of the York Railways Company property; another part dealing with the reproduction cost of the York Steam Heat Company's property, and a page or two at



*Colloquy*

the back dealing with the reproduction cost of the York Bus Company's property.

I should like at this time, with the permission of the Commission to put on the stand a Mr. Braden, who is associated with the staff of Day and Zimmerman, and without going into any detail with respect to the other reproduction costs, merely have him testify very generally first, as to his qualifications, second that he did supervise the preparation of that part of the exhibit, and generally what his approach to it was. Now, it will not be my purpose to break that testimony down into accounting principles to the extent of perhaps more than ten minutes.

The Commissioner: But you propose to give the total round figure?

Mr. Miles: That is right, sir.

Mr. Miller: You mean as to the Bus Company and the Steam Heat Company and the Railways?

Mr. Miles: Yes.

Mr. Miller: I object to that, Mr. Commissioner. I don't think that is relevant in this proceeding.

The Commissioner: Mr. Miles, I would like to state what I understand was the position you took when you opened yesterday morning as to your approach to this whole picture.

I understand that with the exception of the property that was indicated in certain questions you asked yesterday, namely, property of the York Railways that is used by Edison Light and Power Company in whole or in part, to deliver what it furnishes, namely, electricity to customers other than York Railways, you don't contend that any of the property of York Railways, the Bus Company or the Steam Heating Company should be included in the rate base on which a return is to be allowed, is that correct?

Mr. Miles: Our position is that only the property owned by the respondent and used and useful by it in

*Colloquy*

the rendition of electric service should be included in its rates.

The Commissioner: But that for the reasons you stated yesterday, and the circumstances surrounding the picture, Edison Light and Power Company should be allowed by this Commission to earn seven and a half percent rather than six percent, is that correct?

Mr. Miles: May I answer that not quite that categorically.

We think they should be allowed to earn a rate of return which added to the other moneys in this group will permit a continuance of the various services rendered by these four affiliates and at rates which are not burdensome to the electric consumers.

The Commissioner: You did say that the minimum under all circumstances for this company would be seven and a half percent of its fair valuation.

Mr. Miles: I said then, and I say now, that the accounting estimates and investigations that we have made indicate to us that to permit that to follow would require a rate of return of approximately seven and a half percent.

The Commissioner: Now, if that is so, then I don't follow how it is pertinent to this case to develop the valuation of York Railways, York Bus and the Steam Heating Company in this proceeding. It seems to me even under your theory, you would be required to show, if your theory was accepted as being the correct one, what proper burden there is on the Edison Light and Power Company or its earnings in relation to these other companies, or obligation, or whatever you choose to call it, rather than the valuation of these companies. It does not seem to me that the valuation proves anything as related to the burden or obligation, if there is one, on the Edison Light and Power Company in relation to these other companies.

Mr. Miles: If Your Honor will permit I will try to be very brief—

The Commissioner: Certainly.

*Colloquy*

Mr. Miles: Here is our position and what we understand, and I will read the authority upon which I make that statement.

What we understand to be not only the expressed law of Pennsylvania, but the law which has been similarly laid down in other jurisdictions, is this: Here is a company, the respondent, which is one of four affiliates commonly owned, commonly officered, commonly managed companies, so tied together that all of the stock and outstanding notes of this respondent are pledged under an indenture to secure six million dollars of bonds of its parent, York Railways, and under which is likewise pledged stock of another affiliate of the respondent, to wit, York Steam Heating Company. Now, those four companies render a different service in the same city, generally speaking, to different people, a different character of service, but within the same general territory and political confines. It happens that the six million dollars of bonds of the parent company mature within nine or ten months; and it happens that the Railways Company is not making operating expenses; it happens, perfectly frankly, that the respondent is making over six percent on what we regard as a fair value of its property.

The Commissioner: In either case we agree that as to the Edison property it is earning more than six percent.

Mr. Miles: There is no dispute about that.

The Commissioner: Of course, there is not.

Mr. Miles: Under the foreclosure of the mortgage of the Railways Company, if that happens, and we have evidence which we want to get in at the proper time to show that that is very imminent, then in the absence of some relief, such as we propose in this case, in the event of the foreclosure of that mortgage it is to be assumed there would be a cessation of the operation of that Railway Company. There would be presumably a break-down, a split-up of these various companies, or of the stock of this company affiliated under that Railway mortgage, and

*Colloquy*

would presumably be under the hammer or whatever action the bondholders see fit to take, because they own the stock of this company today, and because it is pledged to secure the bonds issued under that mortgage, which is also a direct lien on the property of the Railways itself.

Now, we therefore, ask what? We ask that the Commission not express any opinion of public policy that a rate of return in other cases should be six and a half percent or seven or seven and a half. We say to the Commission that this is an extraordinary and unusual set of facts. Here we have these four companies, tied in together. There is not the remotest doubt on the face of the earth that the Edison Company derives substantial benefits from its affiliation with these other companies. Hence it follows that the benefits which that company derives are benefits which are ultimately to the interest and to the benefit of the consumers of the respondent.

Now, we can show that, Mr. Commissioner; we can show it clearly that this company makes a profit on the sale of its steam, on the sale of its electric energy to the Railway Company. We think we can show you beyond any reasonable doubt that it saves an appreciable amount of money in its annual operating expenses. We think we can likewise show that it would have to make a substantial capital expenditure to build or replace the property and facilities of the Railways Company which it is now using in the benefit of the electric customers.

Now, I mention these things because to me the legal proposition which we suggest in this case is only sound if we can show two things will result from what we ask. If we can show, first, that a continuance of the present inter corporate relationship is to the direct benefit of the Electric Company itself and its consumers, and secondly, if we can add to that that the public interest, treated as whole, is benefited if this same inter corporate affiliation and relationship can be continued, and that thereby service rendered by each of these four companies can be continued.

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Now, that I say is our proposition. Now, we come to the question of value, and I want to be perfectly candid with Your Honor in arguing this point, and you might say, and I think with a great deal of logic—and when I say you, I mean that impersonally—with a great deal of logic even if your position is sound you don't care what the value of these affiliates is, you have no interest in the value of these properties, providing you show that there is not enough money coming in from these properties to permit them to continue, and if you further show that you have some plan that will permit their continuance reasonably, properly and legally approved by the Commission, that you have a sufficient amount of revenue to carry out that plan. Now, here is the difficulty that we have in going along with that argument. The Pennsylvania Superior Court in the *Harmony Electric Company vs. Public Service Commission*, tried on April 18, 1930, in the opinion of Judge Lian, had this set of facts before it, and I shall if Your Honor wants me to, set them forth in substance, but I call Your Honor's attention to the strict analogy in that case and the case which you are now hearing.

The Harmony Electric Company capital stock was owned by a railway company, the Pittsburgh Harmony, Butler and New Castle Railway Company. All of that stock of the Harmony Electric Company was pledged under a mortgage of the Pittsburgh Harmony Butler Railway Company, along with all of the stock of two other railway companies. So at that point factually the analogy is that there was an electric company that owned a railway company which also owned another railway company, and as distinct from it the railway company owned a steam heating company and an electric company. The revenues of the railway company became impaired to the point where it was not making operating expenses, just as we submit is really the fact here. The only modification I want to make on that statement is, we are saying

*Colloquy*

the railway company is not making operating expenses. I mean any reasonable allowance towards its depreciation reserve. So the Harmony Electric Company filed a petition with the Commission, and asked that it be allowed to increase its industrial rates to get more revenue. In support of its position it said that its rates by comparison with other companies serving the same territory were quite low, and hence it asked that it be permitted to charge more rates, thereby get more revenue to pass to the railway company, to permit the continued operation of the railway company.

Now, Judge Linn after reciting the state of facts which I have just recited to Your Honor, and after quoting the testimony in the case, in which the President or officer of the company frankly admitted that the railway company could not make any further charges, even that the electric company could not charge the railway company any more for power because its operating expenses were then at a point that it could not stand any more, after that recitation of facts, the court said:

"A study of the evidence leaves no doubt that in substance the parties reasoned thus: 'Our railway business is losing money; our industrial rates are too low when compared with those of three other companies; in the interest of the Treasury of the holding company to which the profits of all the affiliated subsidiaries ultimately go, we shall increase the power rates to recoup the losses made in the operation of the street railways.'"

Now, that is what Judge Linn said was their reason. We are not here asking at any time to recoup any losses of this Railway. We are prepared at the appropriate time to offer exhibits showing that all we are asking is to just get enough money in the Railway to permit it to continue going, and not be sold under the hammer or scrapped. That was the reasoning of the company in this case. The court says, now, there is perhaps no legal objection to that position if the increase were justified by facts found



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after careful scrutiny of the inter corporate relationships reflected in the various operations of each company. Then later in his opinion he makes the observation that the difficulty of the Electric Company in this matter was that it had offered before the Commission no evidence to show that it was not earning from these groups of property a sufficient sum of money to permit this legal proposition to be considered, and secondly, that there was no evidence before the Commission that would permit any conceivable inclusion of a fair return.

Now, what frankly we are afraid of is this, and I repeat that I don't want to spend any time of any consequence on questioning, but what we are afraid of is this: We close our case, and we don't offer any evidence as to the value of the Railway Company or the Steam Heat Company, we confine ourselves merely to an effort to show how much money they are taking in, and how much we need from this group of properties to in some manner take care of the bonds, refund them, or do something with them, just confining ourselves to that phase of it. Then we will be met with the proposition here or hereafter, "That you didn't include in your record any evidence to show whether the Steam Heat Company was making a fair return, whether the Railway Company was making a fair return, whether the combined revenue of all four of them was a fair return. You are stating it, you argue it, it may have been a fact. The Commission may have had private notice of it by virtue of its annual reports, but there is nothing in this record to indicate that you were not making a fair return on all of these properties as a combined unit or separately."

To illustrate it another way, if I may, suppose the combined net from these properties is X dollars, suppose the combined value of these properties is Y dollars, and suppose Y would be six percent of X. That may be true because of the earnings of the Electric Company and the Steam Heat Company—I don't know whether it is, I

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have not made such a calculation, because that is in the calculation by Mr. Katz who states that condition existed, then how would the Commission know, or how would anybody else know how much of a reduction in revenue of the Electric Company might properly be made to bring it to the point where two conditions concurrently are met, first, that enough revenue is left to carry on the Railway, and second, that they are only getting a fair return, treated more or less as a single unit.

I say to Your Honor with all the sincerity of which I am capable, under our construction of that case we feel constrained to make the most vigorous effort we can to get this evidence in the record, because we believe the court has said to us in fact, or to anybody in that situation, that that is a necessary prerequisite to what may perhaps be a sound legal proposition. I don't want to be misleading, I am not suggesting that the Superior Court has said categorically that that is a sound legal objection. I am not stating that in their opinion, which I read to Your Honor, they have said perhaps that is a sound legal proposition, but you don't have here the prerequisite to support your proposition.

Now, if the Commission please, that is the principal reason and the main reason that we believe this is admissible. There are other reasons which, so far as I am concerned, I say to you frankly are unimportant, although technical, that prevent the inclusion of the evidence, and if I were to argue that those were the principal reasons I would be misleading this Commission. This is our principal reason, and the other reasons are these: In the first place the Commission itself has interjected into this record certain evidence as to the book costs of these properties. Mr. McShea in his own testimony made some reference to the book costs of these other properties, and we shall certainly be able to show Your Honor at the proper time that a substantial part of the property of this Railway Company is used by the

*Colloquy*

Electric Company right today, and has been used for months, owned by the Railway Company, and it seems to me, therefore, it is perfectly proper that all of these property accounts be before the Commission.

In the second and third places it has been contended by the Commission that the respondent does not make a compensatory rate on the sale of energy to the Railway Company. Now again that brings up the question, or might bring up the question, from our conception of the case it does not, but it could be argued to the contrary by Mr. Miller that in order for the Commission to know whether you are getting a compensatory rate we have got to know how much of this property is dedicated to the service of the Steam Heat Company; we have got to know whether the generation facilities which Mr. Palmer says don't belong in the respondent's rate base—if they don't belong there obviously they have to go in the Steam Heat Company's rate base, they cannot be left hanging in the air; they cannot be said for the purpose of this case, they have no place in your rate base, and when we get to the Steam Heat Company, we are sorry but they belong in the Electric Company's rate base.

The same proposition is raised with respect to the sale of energy to the Railways Company. Now, we submit for all of these reasons, if Your Honor please, because of the questions that have been raised in this case itself, as to joint property ownership that the property is appropriately included in one rate base or another. We think this case is clear authority for the proposition that it is not only evidence but that the company itself erred in not offering such evidence under a state of facts which to me is as analogous to the state of facts in this case as any legal authority can be found to exist in any proceeding. By that I mean the setup of the companies, their pledging of the stock the operations in one general community or area, they are just as they are here, and I have read Judge Linn's statement, and on that basis

we ask the right to offer in evidence in this case the reproduction cost estimates of the properties of the Railway Company, the Steam Heat Company and the Bus Company.

Mr. Miller: Mr. Commissioner, if Mr. Miles' position is taken to be sound, and he were permitted to put into this case the cost estimates it would be necessary for the Commission to study those reproduction cost estimates and to present accounting estimates if we felt these estimates were out of line. In other words, we would have four rate cases instead of one. We could not accept the reproduction cost estimates put in by Mr. Miles' witnesses as proper; we would have to investigate them, so that we would have to go into an investigation of the property of the York Railways Company, of the York Steam Heating Company of the York Bus Company in addition to the investigation which we have already made of the property of the Edison Electric Company, the respondent here. I don't think that there is anything in the Harmony Electric decision which would require the Commission to try four rate cases, and get into the valuations of four separate properties when only one is involved in the proceeding before the Commission. I don't think that the Harmony Electric decision goes any further than to point out that the company had not presented evidence of the type suggested by Mr. Miles in that proceeding. I don't think that the court went so far as to indicate that the Commission would have to admit such evidence in any proceeding before it, even a proceeding which was properly comparable to the Harmony Electric situation, and particularly in view of the fact that it would be necessary to draw out this case to inordinate lengths and to conduct lengthy and detailed examinations of the properties of companies which are not involved in this proceeding.

I object to any evidence along that line.

Mr. Miles: In response to Mr. Miller, first, as to the

inordinate length of the time required, viewed from the aspect of the respondent it is not going to increase the time, will not take up two hours throughout this entire case.

Secondly, as to the difficulties involved, of course, we recognize that Mr. Miller might feel that the Commission's staff should make some reproduction cost studies. As a matter of fact to be perfectly frank about it, there was no such study made even as to the respondent's property. They are taking the 1935 appraisal of Day and Zimmerman, making some adjustments, saying that is our study, and I take it that it is highly improbable that this Commission would embark upon detailed cost estimates of these properties. For every practical reason, if for no other reason, the annual reports filed with this Commission will show, if you want to accept the value of the Railway Company to be one-fifth of the figure which we say its reproduction cost is, it is not making a dime, so when you talk about checking up values it does not mean anything, because the company is not making any money on anybody's valuation.

The Commissioner: Mr. Miles, I agree with you entirely that as to any burden put upon the Commission by extensive investigations of the other three companies as a reason for not allowing this testimony, I don't think that holds. If it is proper to allow it the Commission would be required to do whatever was necessary and proper to arrive at a conclusion whether it took one man one day or a hundred men a year. That has nothing to do with it, but I think there is an important factor here, and as a matter of fact this has nothing to do with the entirely proper conduct of this case, or the entirely proper management of the present companies, I am not attempting by what I say to criticize that, but the fact of the matter is, which everyone will admit I think, that the record of financing and control of these companies in the past has certainly been malodorous. That has nothing to do with

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the present situation. However, you have a situation in York—I am talking about years gone by which created certain situations of financing the present financial structure which have nothing whatever to do with this case, however, York Railways has a large bonded debt. Those bonds are due as I understand it, this year.

Mr. Miles: December 2nd.

The Commissioner: In the fall of this year. Anybody knows that York Railways is not earning any money. If it is not completely in the red it is so close to it that the difference is not worth discussing, and it cannot meet the proper payments on its bonds, cannot meet the interest charges in themselves. Therefore, if York Railways stands alone the difficulties of refinancing that bond issue I suppose are insuperable.

The Commission has had a number of cases before it recently, particularly the situation in Harrisburg with respect to the Railway Company where in fact the same situation was apparent, that the Railway Company could not earn any return on its security issued as they then were constituted, and you have the same old sad story of, I won't say shady, but inflated financing of the good old days. In that case the company met its situation by first suggesting that it cut its financial structure in half, and when the Commission objected to that it made further suggestions and they complied with the suggestion of the Commission and the financial structure is now about one-fourth of what it was. They have gone through their reconstruction, and they are now in position, with the help of the Commission, in substituting bus service for railway service, to really and honestly earn money on their capital stock, and everybody seems to be reasonably satisfied. The bondholders and the security holders took a loss in capital, but at least they are getting some return where before they got nothing.

Now, it seems to me there is a remedy for the York Railways under that approach. However, that may be



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the Commission's position has been clearly stated, it seems to me, repeatedly during the last few years, at least since I have been on the Commission, that the Commission is not willing that a sound, prosperous electric utility should be allowed to carry indefinitely in the future a street railway company which is either dying or is certainly anemic.

I certainly have sympathy with the security holders at least the local security holders of the York Railways Company in the situation that is before them, but I don't feel that the consumers of the Edison Light and Power Company who will benefit by reductions in rates if they are made, if the Commission feels and is sustained that they are earning an excessive amount, and it seems to me that is paramount, as against the proposed benefit to the public, in allowing the excess profits of the Edison Light and Power Company to be translated into the York Railways for the purpose of maintaining their present financial structure. That is what it amounts to it seems to me, whether my use of the word, "excess" is well advised or not, that is the point. Certainly I believe we have a responsibility to the people in York to see that the present utility service is maintained satisfactorily if we can. But it seems to me that there is a remedy for the York Railways Company as an alternative to complete collapse, if they cannot refinance their bond issue under the present financial structure, they have the remedy of coming in under seventy-seven to reduce their structure.

Mr. Miles: May I just interject this; Your Honor must bear in mind that the pledge of this stock of the Electric Company is under that indenture.

The Commissioner: I realize that the situation is complicated, and no bondholder is willing—

Mr. Miles: I don't say any bondholder, but any appreciable number has the right to cause foreclosure and sale of the stock of the Electric Company as well as the physical property of the Railways.

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The Commissioner: But no matter what happens the service to the public of the Edison Light and Power Company is not going to be impaired, you know that as a practical matter.

Now, as to the inter-relation between these four companies on the theory that they render, because of the setup, Edison Light and Power Company substantial benefits, it seems to me you could extend that theoretically to a dozen affiliates, and the one very prosperous in the group should carry them all. Frankly, I don't follow that argument. It seems to me that the Commission must, or should, and again I only speak for myself, decide this question on whether the Edison Light and Power Company is earning more than a fair return on its own property used and useful in the public service, plus whatever should be allowed for the use of property of the York Railways and Steam Heat Companies, which is used by the Edison Light and Power to render service to other than the York Railways or the Steam Heat Company.

Now, as to that property, and I take it there is some from what you stated, I am certainly prepared to rule that the testimony as to that part of the property that can be shown is used and useful in rendering service to other than these two companies should be offered in connection with that particular phase of the proposition.

Mr. Miller: That is not quite so really, Mr. Commissioner.

The Commissioner: If there is a piece of York Railway property that is used entirely and solely by the Edison Light and Power Company for the purpose of delivering current to customers of the Edison Light and Power Company, other than York Railways, I say that testimony as to that is pertinent in this case, not as to whether it should be allowed, that is your opinion, but I have mine, as to allowing testimony to go in here as to the value of the whole property of the York Railways, the Steam Heat Company and the Bus Company. I rule that that testi-

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mony should be excluded from this record with the further statement; that at the next session of the Commission, which is next Monday, and before further hearings, I shall present my ruling to the Commission for its determination as a Commission, and the parties will be notified as to the decision of the Commission before the next hearing.

Mr. Miles: May we have an exception to the ruling of the Commission.

The Commissioner: An exception noted. I shall present the matter next week to the Commission and the company will be notified as to the decision of the whole Commission before further hearings are held. If I am overruled then we can go ahead.

Mr. Miles: I take it that that is extremely unlikely.

The Commissioner: It has happened many times. The Commission does not always accept the ruling of the sitting Commissioner, however, I think it will in this case.

Mr. Miles: May I, for the record, inquire whether the ruling of the Commissioner just announced will also deny to the respondent the right to offer any evidence, any statements of the revenues and expenses of the York Railways Company, the York Steam Heat Company or the York Bus Company. I say quite frankly to you under our conception of the case that is clearly admissible under the Harmony case.

The Commissioner: I didn't understand that I was ruling on that. I understood that I was ruling on the testimony you proposed to offer through Mr. Braden.

Mr. Miles: That is right.

Mr. Miller: We would object to that, of course, Mr. Commissioner, on the same theory, that a well horse cannot be compelled to drag the dead mule. When we are trying a case involving the Electric Company, it is the proper expenses of the Electric Company only that should be considered.

The Commissioner: As to that I think I stated for the record myself yesterday, or asked a question which

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advanced it, and matters are on the record which so indicate, in fact I stated just a moment ago that everybody agrees that the Railways Company is operating in the red. I think there is no question about that, and the argument presented here is as I stated that apparently Edison Light and Power shall be able to tide over York Railways at least to the point of enabling it to function, isn't that correct.

Mr. Miles: That is one of the reasons why we think it is admissible.

The Commissioner: Generally that function is re-financing of the six million dollar bond issue which is due in the fall, but I think for the same reasons that are in my mind, that if my ruling on the other matter is correct, I see no value to the Commission in this case in producing of record the earnings and expenses of these other three companies, and I make the same ruling with the same exception and the same presentation to the Commission.

Mr. Miles: May I just for the purpose of the record make an offer?

The Commissioner: Certainly.

Mr. Miles: We offer on behalf of the respondent evidence consisting of estimates of the reproduction cost of the properties of the York Railways Company, the York Steam Heating Company and the York Bus Company; evidence of the original cost of the properties of the York Railways Company, the York Steam Heat Company and the Bus Company, and evidence comprising statements of operating revenues and expenses relating to the York Railways Company, the York Steam Heat Company and the York Bus Company. Such evidence being offered for the purpose of showing the value and earnings of each of the three companies, as an individual corporation and treated as a combined unit, and such evidence being proffered as part of other evidence offered by respondent in behalf of Edison Light and Power Company relating only to its property, revenues and expenses.

*Colloquy*

Mr. Miller: To keep the record straight, I will object on the ground that it is irrelevant and immaterial.

The Commissioner: I will sustain the objection and note an exception, and state that the matter will be presented to the whole Commission as to the correctness of the ruling at the next session.

On the basis of that ruling I rule that only that part of Exhibit 2—

Mr. Miles: That has not been offered in evidence. That is the reason I raised this question at this stage of the proceeding.

The Commissioner: That is correct.

Mr. Miles: The respondent offers in evidence what has been identified and marked as Respondent's Exhibit No. 2, the said exhibit consisting of an estimate by Day and Zimmerman Incorporated of the reproduction cost new, reproduction cost new less accrued depreciation on the plant and property of the Edison Light and Power Company, York Railways Company, York Steam Heat Company and the York Bus Company.

Mr. Miller: Mr. Commissioner, we think it is perfectly proper to have the reproduction cost estimate relating to the property of the respondent, the Edison Light and Power Company. We object, however, to the reproduction cost estimates and the figures relating to the York Bus Company and York Railways Company and the York Steam Heat Company. We don't demand that the exhibit be physically separated so that those figures relating to the three companies last mentioned are eliminated entirely, but we do ask that the Commission in its consideration of this proceeding, and its decision thereon, shall not consider those figures in any way, and shall consider only the portions of the exhibit related to the respondent company.

The Commissioner: Respondent's Exhibit No. 2 will be admitted to the record with the understanding that only that part of Exhibit 2 relating to Edison Light and Power



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Company will be considered as part of this case, and the record as to the other three companies will be excluded from consideration in this proceeding.

Mr. Miller: To which, we of course, except.

The Commissioner: Exception noted.

I would like to say, however, and I would like to make myself clear for the record, that any testimony that the respondent has in this case as to any property of the York Railways or any other affiliate, that is wholly used by the Edison Light and Power Company for rendering service to consumers other than the affiliates in question, will be allowed by the sitting Commissioner to appear in the record.

Mr. Miller: Do I understand that it is your thought that the company would be entitled to a fair return on any property which it may use regardless of who owns it.

The Commissioner: I don't wish that inference to be drawn from what I said. I simply say that such testimony would be allowed to be presented and put in the record for the consideration and determination by the Commission as to how it should be treated in relation to the setup of the Edison Light and Power Company.

Mr. Miller: In other words, it would be admitted—

The Commissioner: I am not expressing any opinion at this time as to the capitalization of property in this setup. I am simply saying that I think it is pertinent for the record to have it appear there.

Mr. Miller: In order to round out the factual picture.

The Commissioner: In order to round out the factual picture without any indication on my part as to what should or should not be done with it.

Mr. Miller: I have no objection to that.

Mr. Miles: Your honor, in view of the Commissioner's ruling, and also having in mind that it has come to be noon, I wonder whether we may have a recess, in order to determine the future policy of the respondent in this case.

The Commissioner: In any case I would like to go on

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with any further testimony you have for the Edison Light and Power Company during this day's hearing, unless you decide on some other policy.

We will declare a recess until one thirty o'clock p. m.

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AFTER RECESS.

Mr. Miller: Mr. Commissioner, I might state at the outset of our session this afternoon that I will not press Mr. Seelye for a breakdown of his figures on organization expenses, and I understand that Mr. Miles is willing to waive Mr. Bierman's furnishing similar figures.

Mr. Miles: That is correct.

Now, Your Honor, before proceeding further, in view of the ruling of the Commissioner before recess, there is one other matter that we would like to raise so that we may have the record perfectly clear:

As a part of the respondent's conception of this case, which I attempted to outline in previous arguments, the respondent intended to offer witnesses who are associated with the management of these companies to lay before the Commission a comprehensive plan of the management, looking to the continuance of the railway operations of the York Railways Company. We felt that such testimony, and with all deference to Your Honor still feel, that such testimony is properly a part of this proceeding, because if Your Honor had seen fit to sustain our theory with respect to the fixing of the rates of return in this case, having in mind in fixing that rate of return that the amount allowed would permit the continuance of the Railways, there was thereby evolved upon ourselves the duty of showing what our plan was for the continuance of the Railways, and what revenues would be required in order to consummate a continuity of that plan, hence we had testimony, and have testimony and evidence available to lay that plan before the Commission. In view of Your

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Honor's ruling, however, this morning, we naturally don't want to be subjected to the burden of expense of bringing people here, in preparing voluminous exhibits along that line if Your Honor feels that such testimony is not properly admissible in this proceeding, and I should, therefore, like to inquire at this time as to what is Your Honor's reaction with respect to that situation.

The Commissioner: I do feel that that is not a part of this record.

Mr. Miles: I rather anticipated from your earlier rulings that you would. Therefore, for the purpose of the record may we offer to introduce testimony and evidence setting forth the plan contemplated by the management of the York Railways Company for its continued operation and its plan for refunding its obligations on bonds maturing December 2nd, 1937, such offer being made in connection with the previous offers of proof submitted by the respondent incident to its conception of the rate of return to which the Edison Company is entitled.

Mr. Miller: I make the same objection that it is irrelevant and immaterial in this proceeding.

The Commissioner: Objection sustained; note an exception for the respondent.

Mr. Miles: Now, your Honor, I am going to make one inquiry of the Commissioner, and I hope the spirit in which I make it will be understood. During Your Honor's observation before recess a statement was made with respect to the malodorous conduct of this company. I should merely like to inquire as to whether that observation was intended to apply to the present management.

The Commissioner: I think I stated clearly that it did not apply to the present situation, and I want to put that clearly on the record.

Mr. Miles: I think you did, but there was some confusion as to whether you did or not.

The Commissioner: There was some question as to the past rigging of this company, as to which the present

*Colloquy*

management, as I understand it has no responsibility whatsoever.

Mr. Miles: Thank you very much.

The Commissioner: My comments were intended to apply in no way to the conduct of this case as now before us.

Mr. Miles: Now, if Your Honor please, the only other evidence which the respondent is prepared to submit at this time, and I don't mean to imply that that is only going to take a few minutes' time, it may take an hour or two, is testimony with respect to the question of whether the generating facilities are properly a part of the rate base of the Edison Company, and for the purpose of refuting testimony adduced by the Commission suggesting that the generation of steam and its sale to the Steam Heat Company was not at a compensatory rate, and that the sale of energy to the Railway was not at a compensatory rate, but at the conclusion of that testimony we are simply compelled to ask Your Honor for a recess of some days. We had contemplated proceeding on our own theory of this case, and unfortunately the exhibits and data which we have available as a result of Your Honor's ruling are now out of the case, and the accounting data and other information which was to follow is not in hand.

The Commissioner: Of course, we will receive the testimony you indicate you desire to present today, which is in my opinion entirely proper in this case, and then as I understand it, you desire an adjournment to a date in the near future when you can present certain accounting data in relation to the Edison Light and Power Company.

Mr. Miles: And some other additional information.

The Commissioner: And whatever you have in addition before we would be ready to proceed to cross examine?

Mr. Miller: I have no objection to that, Mr. Commissioner. I think, of course, you are going to refer the matter of your ruling to the entire Commission for a

*Colloquy*

Decision upon it, and I think that the case might well be adjourned for a reasonable time.

The Commissioner: I would like to ask Mr. Miles at this time how long it will take him before the accounting data and testimony that you have in process of preparing will be ready as to the Edison Light and Power Company.

Mr. Miles: Your Honor, we can be prepared at the expiration of one more week to put in all of the balance of the case, in as many consecutive days as the Commission cares to sit.

The Commissioner: Would you be ready Wednesday or Thursday?

Mr. Miller: I will be in Philadelphia two days next week in the Perkasio Sewer matter which I have started.

The Commissioner: Would it suit you, Mr. Miller, to proceed with this case next week?

Mr. Miller: I don't see how I could. The following week I will be down at Washington, I think at least Mr. Beamish wants me to be in Washington on the A. G. E. case.

The Commissioner: In that case it would require a continuance until the second week in March.

Mr. Miller: The tenth I believe will be Wednesday. A week from today will be the twenty-fifth.

Mr. Miles: Our situation is this: We could be ready by next Wednesday or Thursday to go on. Mr. Seelye, however, is before the New York Commission in the Syracuse case on Thursday of next week. Any time after next week we will be prepared.

The Commissioner: According to Mr. Miller's suggestion the only thing that could be done, the case after the testimony that you are able to produce today would be continued until March ten.

(Remarks by Mr. Miller at his request off the record.)

The Commissioner: We will consider then that this case will be continued to March tenth.

*John B. Ink—For Respondent—Direct*

Mr. Miles: I might say we consider it will take two or three days to finish our case.

The Commissioner: We will set March tenth, eleventh and twelfth as the time for the next hearing.

Mr. Miller: We will be prepared to cross examine at that time, Mr. Commissioner.

The Commissioner: Note on the record the fact that the continuance beyond next week is due to the fact that Mr. Miller has previous engagements due to cases in Philadelphia and Washington, and not because of any delay on the part of the respondent company.

JOHN B. INK, a witness called in behalf of the Respondent, being duly sworn, was examined and testified as follows on

*Direct Examination.*

By Mr. Miles:

Q. Mr. Ink, please state your full name and occupation? A. John B. Ink, Engineer with Day and Zimmerman, Incorporated.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Will you state what has been your experience as an electrical engineer, with particular reference to your experience in connection with the designing and construction of electric generating units? A. From December 1935 to date, I have been engineer on reports on property in connection with certification of registration statements to Securities and Exchange Commission. From 1928 to 1935 engineer with the United Engineers Construction on design and construction of electric generating plants, and industrial plants. Some of the work involved was an extension to the Richmond generating station of the Philadelphia Electric Company; engineering on design and construction of generating plants for the Gulf Refining Company, Port Arthur, Texas; Dominion Coal and Iron Company in the city of Nova Scotia; the Hawaiian Electric Company at Hawaii; industrial plants. The principal one was a generating plant;



*John D. Ink—For Respondent—Lawyer*

a plate mill and miscellaneous items for the Illinois Steel Works, Chicago. 1910 to 1928 engineer with Dwight P. Robinson, design and construction of transmission lines, sub-stations and industrial plants. Included in that were lines and sub-stations for the Duquesne Light Company; lines for the Pease Electric Company; lines and sub-stations for the Los Angeles Gas and Electric; several stations for the New Orleans Public Service Company; and industrial work, including continuous mills for the American Rolling Mill Company at Middletown, Ashland, Kentucky and Butler, Pennsylvania. From 1912 to 1920 engineer with Stone and Webster, transmission line and sub-station design. Degree of M. E. from Cornell 1912.

Q. Mr. Ink, have you personally inspected the generating facilities of the respondent and the methods pursuant to which such facilities are operated by it? A. Yes, sir.

Q. Will you state as part of your investigation whether you have had occasion to study the four party power agreement under which the respondent purchases electric energy for distribution and sale? A. Yes, sir.

Q. Now, I show you a paper marked Commission's Exhibit No. 7, and ask you whether that is a copy of the wholesale purchase power agreement to which you just referred? A. Yes, sir.

Q. Now, will you be good enough to refer to Article eight in this agreement and read into the record? A. Article eight, steam electric generating plant of York Company. The York Company agrees to maintain its present steam plant for emergency and standby service.

Mr. Miles: Now, if your Honor will permit me at this point of the examination, I would like to read myself into the record paragraphs one, two and three of Article three of this agreement.

The Commissioner: All right, proceed, Mr. Miles.

Mr. Miles: I ask that the witness who has testified already that he has personally examined and is familiar with this contract to follow my reading of it.

(Remarks by Mr. Miles at his request off the record.)

*John E. Ink—For Respondent—Direct*

Mr. Willes: Article three definition of phrase contract requirements of York Company. When the phrase "contract requirements of York Company" appears hereinafter in this agreement it shall be taken to mean, all of the electric power and energy requirements of the York Company for use or sale within its existing territory, as those requirements exist or would hereafter exist with the division of territory and business agreement between York Company and Metropolitan Edison bearing even date herewith remaining in force and unchanged and in any additional territory in York County that York Company may in the future serve other than territory to which Metropolitan Edison does not on the date of this agreement directly supply power and energy, and two, all of the electric power and energy requirements of York Railways Company, Glen Rock Electric Light and Power Company and all electric power and energy sold by York Company to any other electric utility in York County other than Hydro and Metropolitan Edison except, "a" such electrical energy and power as York Company may generate in connection with the supply of steam for heating or for the production of service or for the purpose of maintaining its generating plant in readiness to serve.

Now, having in mind, Mr. Ink, the paragraphs of the contract which have been read by you and partially read by me into the record, I ask you what in your opinion is required for the respondent to maintain its generating plant in readiness to serve, basing your opinion upon your experience as an electrical engineer?

A. They would be required to maintain at least two of their boilers under pressure, with a force of men to operate the boiler room, and also a force of men to operate the turbine room. They would also be required to maintain all this equipment in operating condition.

Q. Now, what if any eliminations could be made from their present method of operations in order to maintain that plant in readiness to serve? A. The only reduction in force would be

*John B. Ink—For Respondent—Direct*

the labor required for as handling. Otherwise, the operating force would be identical with that now maintained.

Q. Now, based upon your experience, Mr. Ink, in connection with the operating of generating facilities have you any opinion as to whether the generating plant of the respondent would have any practical value for emergency standby service unless it was maintained as a hot standby? A. It would have very little value as a standby unless it was maintained hot.

Q. Why do you say that? A. Because any interruption which would require the use of this standby would occur too suddenly to permit them to get fire under the boilers. That would take about an hour's time.

Q. So that expressed in my parlance as a layman, unless it was maintained with fire, very hot and ready to go it would take whatever time is required to get it in that condition before you could use it for emergency purposes? A. Yes, sir.

Q. Mr. Ink, have you had any personal experience as a member or in an advising capacity in connection with the negotiation of purchase power contracts? A. I have in an advising capacity.

Q. Now, having in mind your experience in that connection, and further having in mind the capacity of this particular generating plant of the respondent, and your knowledge of its method of operation, have you any opinion as to whether the existence of that plant of the respondent and its maintenance in the manner that it is maintained constitutes any bargaining factor to the respondent in the purchasing of power? A. The fact that the respondent has an established generating plant which could be extended to take care of its entire requirements gives it an advantage in bargaining for the purchase of power that would not be enjoyed by a purchaser who had no generating facilities or organization which would serve as a foundation for a generating plant to take care of his entire requirements.

Q. Now, I should like to next inquire as to the ability of the steam and electric generating equipment of the central plant to carry the maximum demand for steam by the Steam Heating Company and at the same time operate the electric generating

*John B. Ink—For Respondent—Direct*

equipment up to the capacity required for the important central city load in the city of York? A. The plant has the necessary capacity to carry the maximum recorded steam heat load and at the same time to carry about seven thousand kilowatts of electric load.

Q. Isn't it a fact that the seven thousand kilowatts of the electric load would take care of the more important public institutions, hospitals and a substantial part of the central portion of the city? A. It is, yes, sir.

Q. Now, can you tell us whether you have actually caused any test to be made for the purpose of testing the accuracy of your last answer? A. Yes, sir.

Q. First, before inquiring as to the character of the results tell us what were the results of the test that you did make. What I am getting there, Mr. Ink, did these tests prove that there was sufficient capacity to do what you have just testified? A. Yes, sir.

Q. Now, are those boilers equipped with the character of meters that permitted an accurate test to be made? A. Yes, sir.

Q. With that foundation, tell us what sort of test you made so that we will know the scope of it? A. The test was made by the respondent at my request, and consisted in loading the boilers in pairs for a period of two hours. The results with boilers 1 and 2, produced 71,958 pounds of steam per hour; 3 and 4, 63,920 pounds per hour; 5 and 6, 93,273 pounds per hour, or a total of 229,151 pounds of steam per hour.

The maximum recorded demand on the Steam Heating Company is 125,255 pounds. That is from the reading of the boiler charts for January 28, 1936. That leaves for the operation on the No. 2 turbine the difference between the total output of 222,151 pounds and the requirements of the Steam Heat Company plus the boiler auxiliaries which are necessary, of 125,255 pounds, leaving 103,896 pounds for operation of the turbine at the rate of nineteen pounds of steam per kilowatt hour. This much steam will produce 5,268 kilowatts. In the No. 2 turbine, which has a name plate rating of 4,000 kilowatts, 5,000 KVA, but which has been operated up to 6,300 kilowatts an hour. At the

*John B. Ink—For Respondent—Direct*

same time that No. 2 turbine is producing this much power, 1,500 kilowatts of power is available from No. 1 turbine, which operates on steam delivered to the Steam Heat Company. The total generative power under these conditions is 6,968 kilowatts.

Q. What was the last figure there? A. 6,968 kilowatts.

Q. Of energy that could be generated? A. Yes, sir.

Q. And what is the company's peak? A. The company's peak in 1936 was 18,200 kilowatts.

Q. So that it is capable, assuming that at the same time it is generating its maximum capacity of steam requirements, its all time high so to speak, of producing about one-third of the peak load requirements of the respondent? A. Yes, a little more than one-third.

By the Commissioner:

Q. What is the requirement for the York Railways at that peak; how much of that 18,000 is required by York Railways? A. Probably 1,000 kilowatts.

By Mr. Miles:

Q. Is that coincidental with the other peak? A. The railway peak is not coincidental with the—that is, the hourly peak of the railway is not coincidental with the hourly peak for the system.

Q. Now, Mr. Ink, in your testimony you referred to a date, to the date of December 28, 1936, with respect to steam boiler maximum capacity. Why did you select that date? A. There are—

Q. Before we go into that, isn't that the all time high, so far as the records of the company disclosed? A. There were two days practically identical in January, 1936, which were an all time high for the system.

By the Commissioner:

Q. The all time high for the steam demand and the all time high for the electrical demand? A. Yes, sir. The days were January 24 and January 28. The records are not complete for

*John B. Ink—For Respondent—Direct*

the 24th, but as the total output for the day is practically the same as the 28th we can assume that the peak hour was probably not far different on the 24th from the 28th.

By Mr. Miles:

Q. Now, have you among your work sheets there the original chart, bearing the certification of the chief of operations which portray the result of the tests to which you have referred, and which indicate the pounds of steam produced in the test period?

A. Yes, sir.

Q. May I see that chart just a minute?

(Witness handed charts to counsel.)

Mr. Miles: Now, Your Honor, the paper which the witness has just handed me is the original chart and it is certified on February 5, 1937, sworn to before a notary public on the same day and bears the signature of M. B. Turnbull, Chief of Operations. We should like to state for the record and for the benefit of counsel for the Commission that we will be very glad to have Mr. Palmer or anybody for counsel of the Commission examine this chart whenever you care to.

The Commissioner: Are you going to offer it as an exhibit?

Mr. Miles: The only difference is that I don't have photostatic copies. We will have them made, and we offer this with the understanding that we may furnish copies later on.

Charts showing amount of steam produced, produced and marked Respondent's Exhibit No. 3, E. E. M., 2/18/37.

By Mr. Miles:

Q. Is this the chart to which you referred in your last answer?

A. Yes, sir.

Mr. Miles: We now offer in evidence Respondent's Exhibit No. 3, the chart just identified and marked.



*John B. Ink—For Respondent—Direct*

Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 3 will be admitted to the record.

By Mr. Miles:

Q. Mr. Ink, it has been stated by witnesses for the Commission that the respondent does not have sufficient boiler capacity to take care of the maximum steam requirements for steam heat, and at the same time have sufficient steam to provide the maximum electrical output from the turbo generators. Have you made an investigation to determine the soundness of this observation? A. I believe that was based on the assumption that one of the six boilers must at all times be maintained as a spare. The figures which I just gave you on the output for the maximum day assumed the boilers operating—

Q. Assumed what? A. The boilers operating normally to supply the steam load only. There is at least one spare boiler at all times available, so that the respondent can and does keep his boilers, maintains them in first class operating order at all times, so that it is hardly necessary to require the spare boiler to be available on the rare occasions that it is necessary to operate standby electrical generating equipment. There was in the year 1936, which was a year of maximum demand on the steam heating system, there were only three days when the load was of such a magnitude that the hot load and the No. 2 generator could not have been carried with five boilers. The chance of requiring standby electric generating capacity on the same days that we have the maximum steam load demand—steam hot load demand is very remote.

By the Commissioner:

Q. It is not possible, is it, for this plant to furnish the maximum load for the steam heating, plus the maximum load for the electric company at one time? I understood you to say that they could furnish about one-third of the maximum load of the Electric Company? A. About one-third. They can't furnish the entire electric load under any conditions. They have not suffi-

*John B. Ink—For Respondent—Direct*

cient equipment. They can only furnish the maximum that they can get out of No. 2 turbine which is slightly over 6000 kilowatts, and No. 1 turbine which can produce 1700.

Q. Under those circumstances of furnishing at the same time a maximum steam heat load would there be enough capacity there to furnish in case of failure of the supply by purchase the ordinary supply for these two interconnections, would there be enough to furnish electric energy for the essential service of York? A. Yes, sir, there would.

Q. The maximum capacity such as hospitals, and so on? A. Yes, sir.

Q. And street lighting? A. Yes, sir.

The Commissioner declared a recess of five minutes.

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*AFTER RECESS.*

JOHN B. INK, recalled.

*Direct Examination.*

By Mr. Miles:

Q. Now, Mr. Ink, I hand you a chart entitled "Edison Light and Power Company—Chart showing total pounds of steam generated each hour of the day January 28, 1936," and I ask you whether that was prepared under your supervision? A. Yes, sir.

Q. Now, that chart as I understand it indicates in the right hand column the pounds of steam, and in the lower column the hour at which the various peaks and valleys were reached, is that right? A. That is correct.

Q. And it shows that the total pounds of steam generated in that day aggregate about how much? A. About 125,000 pounds per hour at the maximum hour.

Q. And that is January 28, 1936, which is the day you testified was the all time high? A. Yes, sir.

*John B. Ink—For Respondent—Direct*

Q. And that is the figure which you have used in your testimony in this respect? A. Yes, sir.

Edison Light and Power Company—Chart showing total pounds of steam generated each hour of the day January 28, 1936, produced and marked Respondent's Exhibit No. 4, E. E. M., 2/18/37.

Mr. Miles: The respondent offers in evidence the chart just identified by the witness.

Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 4 will be accepted for the record.

By Mr. Miles:

Q. Mr. Ink, I hand you another diagrammatical sketch which is entitled, "Diagrammatical sketch of central generating station," and the general arrangement of the steam facilities of the Edison Light and Power Company, and ask you whether that was prepared under your supervision? A. It was, yes, sir.

Q. Now, as I understand it that sketch merely shows the physical layout and arrangement of the central generating plant and the installations located in it? A. That is correct.

Q. Indicating the boiler rooms and the electric conversion and control rooms and the turbine room? A. That is right.

Q. And then it also shows the substation and the old boiler room? A. Yes, sir.

Diagrammatical sketch of central generating station showing general arrangement of steam facilities, electrical generating units and conversion equipment; source of purchased power and single line wiring diagram of principal electrical circuits produced and marked Respondent's Exhibit No. 5, E. E. M., 2/18/37.

Mr. Miles: Respondent offers in evidence the sketch to which the witness has just referred.

Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 5 will be admitted to the record.

*John B. Ink—For Respondent—Direct*

By Mr. Miles:

Q. Mr. Ink, I hand you four sheets, the first page being entitled, "Summary statement showing the beneficial interest or profit accruing to the electric company resulting from the operation of the central electric generating plant for the production of steam in lieu of operations on a strictly standby basis, during the year ended December 31, 1936," with three additional sheets representing the detail of the figures shown on the summary statement which I have read, and I ask you whether those sheets were prepared under your personal supervision? A. Yes, sir, they were.

Summary statement showing the beneficial interest or profit accruing to the electric company resulting from the operation of the central electric generating plant for the production of steam in lieu of operations on a strictly standby basis, during the year ended December 31, 1936, produced and marked Respondent's Exhibit No. 6, E. E. M., 2/18/37.

Mr. Miles: Respondent asks that the four sheets which the witness has just identified be merely marked by the stenographer.

By Mr. Miles:

Q. Now, I take up the first of the four sheets, the one which I read into the record, and which is entitled, "Summary statement." Will you take line 1, which is entitled, "Operation and maintenance costs incurred at the central power plant on the basis of actual operations during the year ended December 31, 1936," as shown by sheet No. 2 of this exhibit. Do I understand (remarks by Mr. Miles at his request off the record) that the figure of \$101,514 in the column to the right under "Boiler plant operations" represents that portion of the operation and maintenance costs actually incurred in connection with the central generating plant during the year ended December 31, 1936 that is allocable to the boiler plant operation? A. That is correct.

Q. And the next column to the right entitled, "Turbine plant

*John B. Ink—For Respondent—Direct*

operations" is the proportionate part of the aggregate operation and maintenance costs incurred in 1936 allocable to the turbine plant operations? A. That is right.

Q. The next column entitled, "Electric conversion and control" is the proportionate part of the aggregate of 1936 operation and maintenance costs incurred at the central power plant allocable to the electric conversion and control facilities? A. That is right.

Q. And the sum of the three items to which I have just referred in my last three questions aggregates \$142,178, which is the aggregate operation and maintenance cost incurred during the year 1936 at the central power plant? A. That is right.

Q. Now, take up the next line, what is meant by line 2 under the heading, "Items"? A. Line 2 is the estimated operation and maintenance cost that would be incurred if the plant was maintained strictly and only as a standby, with no production of steam for sale to the Steam Heat Company and no generation of electricity.

Q. In other words, if the respondent was not engaged in the generation and sale of steam, but operated its plant strictly as a standby, it would incur operating and maintenance costs, or it did incur operating and maintenance costs during the year 1936 of \$57,773? A. We estimate that that is the part of the actual operating and maintenance costs that would have been necessary to maintain the plant as a standby.

Q. In other words, they actually incurred \$142,178, and of that sum your estimate is, and the details of your estimate as shown on sheet 3 of this exhibit that \$57,773 of it would necessarily be allocated to the operation of the plant for strictly standby purposes, is that correct? A. Including the necessary operation of the electric conversion and control department.

Q. That is right. \$57,773 is the sum of the items shown in columns 1, 2 and 3 for each of the different functions or operations? A. Yes, sir.

Q. Now, proceeding with an analysis of the summary, and going to the extreme right hand column, because the first three columns are merely the breakdown between the three func-

*John B. Ink—For Respondent—Direct*

tional departments of the plant, going to the extreme right hand column, the \$84,405 shown on line 3 in column 4 is the increment cost of the steam and electric generation in excess of standby cost? A. That is right.

Q. Can I express it also perfectly truthfully in this way: That if the company had not engaged in the generation and sale of steam, but had only maintained the plant as standby it would have cost \$57,773? A. Yes, sir.

Q. So that in order to engage in the distribution and sale of steam it spent an additional \$84,405? A. That is right.

Q. Now, we come to line 4, Mr. Ink. Will you please state what the figure of \$102,122 shown on line 4 under columns 1 and 4 represents? A. That is the credit to operation due to supplying steam for the Steam Heat Company in the year 1936.

Q. Well, it is actual income received from the sale of steam by the Steam Heat Company? A. That is true.

Q. That is an actual book figure? A. Yes, sir.

Q. It is revenue which the company received from the sale of its steam? A. Yes, sir.

Q. Now, in the next line you have a figure in columns 2 and 4 of \$24,220. Will you tell me what that represents and how you arrive at it? A. That represents the amount that would have been paid to the power company under the contract had the power which was generated at central plant been purchased under the contract for purchased power.

Q. In other words, if the respondent had purchased all of its power in 1936 rather than having generated a certain part of it, the respondent would have paid for the purchasing of such power under its purchase power agreement the sum of \$24,220? A. That is right.

By the Commissioner:

Q. Now, you arrive at that figure by adding that much power to the amount of power actually purchased, you didn't calculate that power as power purchased separately from the other power? A. No, sir.

Q. But adding it to the power already purchased and at the



*John B. Ink—For Respondent—Direct*

advantageous rate that that larger consumption would give to the company, is that right? A. Yes, sir.

By Mr. Miles:

Q. In other words, we assume that we would have bought it at the most favorable rate available to us under the power contract? A. That is right.

Q. Now, going to line 6, in the fourth column you have the total of \$126,342, which is made up as I understand it from an addition of the figure of \$102,122 shown on line 4 in the same column, or the aggregate revenues received from the sale of steam and the sum of \$24,220 shown on line 5 in the same column? A. That is right.

By the Commissioner:

Q. You add together revenue received for steam and the amount that would have been paid for generated power had the power been purchased? A. That is right.

Mr. Miles: We add together the revenues received from the sale of the steam and the savings in the cost of power resulting from the generating as distinguished from the purchase of that much energy.

By Mr. Miles:

Q. That is correct, isn't it?

The Commissioner: No, I don't think it is a saving particularly. You add the revenue from the sale of steam to the amount that would have been paid for the generated power had the power been purchased under the contract.

Mr. Miles: I think we are both saying the same thing, Your Honor, because if we had not generated that much power our power costs would have been increased by the sum of \$24,220. That is the reason I put it that way.

The Commissioner: Even I can understand that.

*John B. Ink—For Respondent—Direct*

By Mr. Miles:

Q. Now, coming down to line 7 I notice that item is entitled, "Profit resulting from the sale of steam and generation of 3,925,100 KWH of energy but not including savings in cost of purchased energy resulting from compliance with article eight of purchased power contract." Now, I inquire, first, as to why you use the figure of 3,925,100 KWH? A. That is the amount of energy generated by the respondent during the year 1936.

Q. And it is that amount of kilowatt hours that would otherwise have been purchased under the power agreement? A. That is correct.

Q. And which would have cost at the most favorable rate \$24,220? A. That is right.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Now, will you show how you arrive at the figure of \$41,937, which you show on line 7 in column 2, and after which figure is placed an asterisk? A. That is the sum of \$23,251, which is the net profit from the sale of steam; it is the difference between the increment between the amount received for the steam and the increment cost of producing that steam, plus \$17,899, which is the difference between the value of the kilowatt hours generated and the increment cost of producing that power, \$6,321.

Q. Well, suppose we break that down a little more. I mean by that break down all of the figures on line 7. The first figure on that line, namely, the one in column 1 is \$23,251, and that as I understand it is the difference between the figure of \$78,871 shown on line 3 of that column, or the cost of generating the steam and the \$102,122 which is the total revenue received from the steam? A. That is correct.

Q. And the \$17,899 shown in column 2, on line 7, is the difference between the cost of generating the 3,925,100 kilowatt hours of energy and what the company would have been required to pay for such energy at its most favorable contract rate? A. That is right.

*John B. Ink—For Respondent—Direct*

Q. That subtraction produces the sum of \$17,899, and still, confining ourselves to line 7, the item of \$787, is the difference between items shown opposite lines 1 and 2 with respect to the conversion and control room?

The Commissioner: In other words, that figure is subtracting \$787 from nothing gives \$787?

Mr. Miles: That is right.

By Mr. Miles:

Q. Resulting in a gross profit of \$41,937? A. That is right.

Q. Now, I notice you have an asterisk, Mr. Ink, after that last mentioned figure, and a foot note, and I will ask you to explain the basis of that foot note, and the reason for its being on the chart? A. In the event that respondent was not engaged in the generation and sale of steam and the central electric generating plant was merely maintained as a hot standby in compliance with Article VIII of purchased power contract; this profit would be replaced by the expense of \$36,842, which is the cost of maintaining the boiler plant and the turbine plant on the standby basis, together with a slight increase in the electric conversion and control when the plant is operating merely as a standby.

Q. All of which means, as we understand it, that if we merely operated the plant as a standby and purchased all of our power, and didn't engage in the sale of steam— A. Then we would be out of pocket \$36,842.

Q. So your statement is that the actual profit is the total between the \$41,937 and the \$36,842? A. Making a total of \$78,779 profit by virtue of its present method of operation.

The Commissioner: Mr. Miles, in that foot note shown by the asterisk that figure should be \$36,842?

Mr. Miles: Yes, sir.

The Commissioner: And also should not the words afterwards, "As shown by line 8, column 4 instead of line 4, column 4."

Mr. Miles: Yes, your Honor, that is correct.

*John B. Ink—For Respondent—Direct*

The Commissioner: I think there are two typographical errors there.

Mr. Miles: May I have the privilege of making that change on this exhibit?

The Commissioner: Yes, and I will mark this one.

By Mr. Miles:

Q. Now, Mr. Ink, the second page of this exhibit is nothing more than the breakdown between the boiler plant, the turbine plant and the electric conversion and control room of the operation and maintenance costs shown on line 1 of the first sheet?

A. Yes, sir, it is an allocation of that, of that operation and maintenance cost to the three departments, boiler plant, turbine plant and electric conversion and control.

Q. A further break down between direct labor, direct supplies and expenses, and proportion of superintendence. A. Yes, sir.

Q. And the third sheet of the exhibit is the break down of the estimated operation and maintenance costs aggregating \$57,773 as shown on line 2, column 4 of the first sheet, representing the proportion of the operating and maintenance costs that would be incurred if the plant was operated strictly on a standby basis? A. That is correct.

Q. And those figures are likewise broken down in precisely the same manner between the three functional departments of the plant, and further divided between direct labor, direct supplies and expenses and proportion of superintendence? A. Yes, sir.

Q. Now, the fourth sheet of the exhibit is for the purpose of establishing the details supporting the figure of \$24,220 mentioned on lines 6 and 7 of sheet 1, as being the cost of power to the respondent if it had purchased under this power agreement the number of kilowatt hours that is generated in 1936? A. That is correct.

Mr. Miles: Now, your Honor, we ask that this exhibit be accepted in evidence, marked as Respondent's Exhibit No. 6.

Mr. Miller: No objection.

*John B. Ink—For Respondent—Direct*

The Commissioner: Exhibit No. 6, consisting of four pages, will be admitted to the record.

By Mr. Miles:

Q. Mr. Ink, I hand you two sheets, the first being entitled, "Edison Light and Power Company, 1936 increment cost of service to York Railways Company and profit to Edison Light and Power Company, and the second sheet showing the derivation in detail of the estimated cost and profit," and ask whether that was prepared under your supervision? A. Yes, sir, it was.

Edison Light and Power Company, 1936 increment cost of service to York Railways Company and profit to Edison Light and Power Company, produced and marked Respondent's Exhibit No. 7, E. E. M., 2/18/37.

By Mr. Miles:

Q. Mr. Ink, as I understand this exhibit, from this total it is calculated to establish the cost of the energy sold by the respondent to Railways Company and the respondent's conception of the profit that results from that sale, that is correct, isn't it? A. That is correct.

Q. Now, taking page 1, line 1, column 1, do I understand that the first column indicates that in 1936 the York Railways Company used 4,232,300 kilowatt hours of energy? A. Yes, sir.

Q. Column 2, line 1, shows the total cost to York Railways Company of the power it purchased from the respondent? A. That is correct.

Q. In other words, let us be clear: That is not the cost to the respondent of that many kilowatt hours of energy but, it is really the price that it sold that many kilowatt hours of energy to the Railways Company for? A. That is right.

Q. So by dividing that cost expressed in dollars by the aggregate number of kilowatt hours we established the cost per kilowatt hours as shown on line 1, column 3, that is the cost to the Railways Company, is that right? A. That is right. That is the

*John B. Ink—For Respondent—Direct*

rate paid by the Railways Company to the Edison Company for power.

Q. And that rate was 9 mills per KWH? A. Yes, sir.

Q. Now, the second line, the first column is the figure of 71,151,000. Do I understand that that is the aggregate number of kilowatt hours of electric energy purchased by the respondent during 1936? A. Yes, sir, that is correct.

Q. The only modification to that being that that is exclusive of certain power it purchased under existing contracts, isn't it? I mean for particular customers? A. Yes, sir, that is correct.

Q. What was the total cost to the respondent, Mr. Ink, for that number of kilowatt hours in 1936? A. The total cost was \$548,244.

Q. What was the cost to the respondent per KWH? A. .771 mills—I beg your pardon, 7.71 mills.

Q. Now, the energy, therefore, which the respondent sold to the Railways Company in 1936 cost it 7.71 mills, and the Railways Company paid for that energy 9 mills? A. Correct.

Q. Now, what is the next line intended to disclose, Mr. Ink? A. That next line shows the cost to the Edison Company of purchasing power had they not purchased the power requirements of the railway. In other words, the kilowatt hours purchased without the railway would be 66,918,700, and that would have cost them under the contract \$522,434 or 7.81 mills per kilowatt hour.

Q. Merely by way of clarification, as I understand it, the total power purchased by the respondent in 1936 was 71,151,000 kilowatt hours? A. Yes, sir.

Q. Of which 4,232,300 kilowatt hours was sold to the railways? A. Yes, sir.

Q. Hence if the respondent reduced its purchase of power by the amount necessary to supply the railways it would have only required in 1936, 66,918,700 kilowatt hours? A. Yes, sir.

Q. And line 3 under columns 2 and 3 shows what the respondent would have paid under its present power contract for that many kilowatt hours, and also the price per kilowatt hour that it would have paid? A. That is correct.



*John B. Ink—For Respondent—Direct*

Q. Now, what is line 4 intended to disclose? A. Line 4, column 1, is the amount of power, kilowatt hours sold to the Railways Company. Line 4, column 2 is the increment cost of that power to the Edison Company obtained by taking the difference between their actual power bill, and their power bill had they not had the railway load. That increment cost would have been \$25,810 or 6.1 mills per kilowatt hour.

Q. And by deducting that increment cost of the Railway Company load in the amount of \$25,810 from the figure of \$38,091, shown on line 1, in column 2 as the actual price received by the respondent for the energy it sold to the railway you arrive at a profit on the sale of that energy of \$12,281? A. Yes, a gross profit.

Mr. Miller: Now, Mr. Commissioner, I think I should object to any further testimony, or even to the testimony already given on this exhibit, since the figure in line 2 indicating total power purchased by respondent does not represent the total power purchased by respondent, but that total power figure minus Gladfelter and miscellaneous customers as indicated on the exhibit. Unless we know how much was deducted for Gladfelter and miscellaneous customers we cannot determine anything with reference to the reliability of the deductions based upon the total power figure on line 2.

The Commissioner: Mr. Miller, I understand, and both you and Mr. Miles will check me if I am wrong, that the power purchased for the use of Gladfelter and others described as miscellaneous customers is purchased under separate contracts, applicable only to those special customers.

Mr. Miles: That is correct. That is entirely correct.

The Commissioner: Under a different classification and rate.

Mr. Miles: That is exactly the reason we deducted that from this showing.

The Commissioner: Is there anything in the record, or

*John B. Ink—For Respondent—Direct*

is it to be shown in the record anywhere, the setup under those special contracts?

Mr. Miles: The Gladfelter contract is in the record.

The Commissioner: What does: "Miscellaneous customers" mean? What does that mean, and how many are there besides Gladfelter.

Mr. Seelye: Shown in Exhibit 8.

Mr. Miles: For the same reason, in response to the last question that the persons embodied within the description "Miscellaneous customers" are likewise persons who are served under separate contracts, entirely different from the four party power agreement that is referred to in this case.

The Commissioner: Is there anything in the record, description of the Gladfelter and these other miscellaneous customers?

Mr. Keesey: The Gladfelter contract is in the record. I don't think there is anything in it with reference to these miscellaneous customers.

The Commissioner: How many of these miscellaneous customers are there?

Mr. Miller: I understand there are very few of them, and I withdraw my objection.

By Mr. Miles:

Q. Now, you have deducted from your gross profit of \$12,281 indicated on line 5 under column 2 the sum of \$615 indicated on line 6 in the same column representing maintenance cost of conversion equipment, average of 1935-1936 costs. Why is that deduction made? A. The Edison Company was obliged to spend that average amount for maintenance of conversion equipment used for service to the Railway Company.

Q. In other words, they are required to maintain certain equipment at an average cost to the Edison Company as reflected in the two year period of \$615 per annum? A. That is correct.

Q. And you therefore deducted that maintenance cost from

*John B. Ink—For Respondent—Direct*

your gross profit shown in the preceding line? A. That is correct.

Q. What is that conversion, Mr. Ink, that you refer to? Is it conversion from alternating to direct current? A. Yes, sir.

Q. Mr. Ink, the \$615 maintenance figure which you have just mentioned is the average maintenance cost per annum for these two years for the conversion facilities which Mr. Palmer in his testimony suggested should be deducted from the rate base, is it not? A. That is correct.

Q. And are not those same facilities used also for the delivery of power to at least two other customers? A. That is correct.

Q. And those two other customers are the Pennsylvania Railroad and the Burchall Stone Cutting Organization? A. Yes, sir.

Q. And the energy is delivered to those customers over the lines of the Railways Company? A. That is correct.

Q. Well, after making the aforementioned deduction of \$615, what is the net profit at which you arrive on the sale of power to the Railways Company by the respondent? A. Line 7, net profit on power sales to York Railways Company \$11,666 for the year 1936.

By the Commissioner:

Q. Mr. Ink, if you took the cost of power to the York Railways at 9 mills and the cost to Edison Light and Power of all that is purchased at 7.71 mills, which includes the four million and therefore makes the purchase price per kilowatt hour less to the Edison Light and Power Company, that is correct; isn't it? A. Makes it less by one-tenth of a mill.

Q. If the power purchased including York Railways requirement cost 7.71, and without the Railways it cost 7.81, then the inclusion of the York Railways demand, the purchase of that demand by Edison Light and Power reduces the cost per kilowatt to Edison by one-tenth of a mill, is that correct? A. That is correct.

Q. Then why is it not a fair calculation also to take the difference between the cost per kilowatt hour and the total load

*John B. Ink—For Respondent—Direct*

to Edison at 7.71 as against 9 mills received or a difference of 1.29 mills and multiply that by the 4,232,000 to find the profit of that. If you do it that way you get about \$5,450? A. I hadn't—

Q. Where am I wrong on that. It must be wrong somewhere? A. I will explain how I arrive at the increment cost of the York Railways load, that might explain it. That is obtained by subtracting from the actual demand—

Q. I understand perfectly that explanation, I think I do at least. What I was trying to say was, why isn't it just as reasonable to make the calculation by taking the figure at which Edison gets its power wholesale at the figure as represents the per kilowatt hour cost, because it buys over four million kilowatt hours for transmission to York Railways and therefore reduces it from 7.81 to 7.71, and then take the difference between what it pays per kilowatt hour and what it sells it for to the York Railways, 1.29 and multiply that by 4,232,000 to get the profit. If you do that you have just about half or a little less than half of the profit, if my figures are right. It must be, of course, because you are taking the figure of 7.71 as against 6.10.

Mr. Miles: May I interject just this observation: Of course, Your Honor understands the purpose of this exhibit is not primarily to show how much money we are making by the sale of this energy, but to the heretofore suggestion that the Railways Company is a load on the Edison Company and that that is one of the reasons why it should be taken out of the rate base.

The Commissioner: Even under the calculation that I have made, of course, it would show a profit to the Edison Light and Power Company, and I just wondered—however, go ahead. It will come out on cross examination.

Mr. Seelye: Mr. Miles, has asked me to say to you, or point out to you that if they lost this customer they would cease purchasing from the wholesale company four million some odd hundred thousand kilowatt hours which would come off the—

The Commissioner: And therefore, if they purchased four million less their cost per kilowatt hour increases

*John B. Ink—For Respondent—Direct*

one-tenth of a mill per kilowatt hour for the total of 66,000,000.

Mr. Seelye: For all customers.

The Commissioner: For the 66,000,000 kilowatt hours.

Mr. Seelye: That is correct, sir.

By Mr. Miles:

Q. You have shown a profit to this point as calculated by you of \$11,666, and I notice at the foot of column 4 you add a further profit of \$3,422, being an aggregate profit on the sale of energy from the respondent to the Railways Company of \$15,088. Now, will you explain items 8 to 16 for the purpose of showing how you arrived at the \$3,422 that I have mentioned. A. The contract for purchasing power imposes a penalty for average power factor below 80 percent. The average power factor of the Edison Company allowed, exclusive of the Railway load is about 67 percent lagging. In order to correct that power factor to 80 percent lagging it is necessary to operate synchronized condensers and capacitors on that system. The operation, maintenance cost and fixed charges on this equipment used for power factor correction is calculated to be \$18,025 per year, line 13. Now, that amount is extended—

By the Commissioner:

Q. What line did you say? A. Line 13.

The Commissioner: My glasses must be bad, \$18,025 appears in line 14 in my sheet—that is what you said, \$18,025?

The Witness: Yes, sir.

By the Commissioner:

Q. That appears on my sheet as line 14?

Mr. Miller: It is a continuation of line 14.

The Commissioner: I was looking on the wrong side.

The Witness: Now, the power factor of the Railway conversion equipment in the central plant is about 98 percent leading, that is, the average power factor and the

*John B. Ink—For Respondent—Direct*

kilowatt hours on that load supplied to the Railway Company from central plant in the year 1936 was 3,301,900, that is a little more than 75 percent of the total Railway load. That load requires no power factor corrections being at 98 percent leading power factor, and it has the effect of raising a portion of the existing load from 67 percent lagging power factor to 80 percent lagging power factor that has been calculated to amount to 8,678,100 kilowatt hours. Then the cost of power factor correction line 13 must have been extended on the balance of the load, the balance of the load being line 12, 63,096,100 kilowatt hours, and this expense for power factor correction per kilowatt hour, line 14, is .0002875 mills per kilowatt hour. We therefore credit the Railway load which is at 98 percent leading power factor to the amount of existing load corrected by the effect of that Railway load at .0002857 mills per kilowatt hour, and we get the amounts shown in lines 15 and 16. Line 15, "Credit to Railway load for correction 8,678,100 kilowatt hours, at .0002857 mills per kilowatt hour, \$2,479."

Line 16, credit to Railway load due to requiring no correction 3,301,900 kilowatt hours at .0002857 mills, \$943, or a total credit for power factor of \$3,422, which added to the credit shown in line 7 gives a total credit of \$15,988:

By Mr. Miles:

Q. Now, Mr. Ink, will you refer to the second sheet of this exhibit, which is entitled, "Statement showing the derivation of the cost and profit arising from the sale of power supplied to the York Railways Company during the year ended December 31, 1936," and without going through each of the months will you kindly explain what this exhibit is calculated to show? A. In this exhibit we have reduced the kilowatts of demand by the coincident demand of the Railway load and calculated the resulting demand charge under the contract, and have reduced the kilowatt hours purchased by amount of kilowatt hours purchased by the amount of kilowatt hours supplied by the Rail-



*John B. Ink—For Respondent—Cross*

May excluding the energy charge, and we find a total charge for the Street Railway load, line 14, for the year 1936 of \$522,435.

Q. That is column 14? A. Yes. The total charge for the Railway load—the total charge for all power purchased exclusive of the Gladfelter and miscellaneous customers is shown in column 15 of \$548,244. Increment cost of the power purchased for the Railway service is a difference between column 15 and column 14, shown in column 16, which is \$25,809, and column 17 shows the total revenue received from the Railway Company. /

Q. And you show there a figure of \$12,281, is that right? A. Yes, sir, that is the difference between column—

Q. Mr. Keesey says you have taken a dollar away because it is \$12,282 on the summary statement, but we won't quarrel about that.

Mr. Miles: The respondent at this time offers in evidence, and ask that it be marked as Respondent's Exhibit 7 the sheets with respect to which the witness has just been questioned.

Mr. Miller: We have no objection, Mr. Commissioner. Perhaps I went too far in saying that the exhibit presented a true picture. We will check it. I have no objection to it.

The Commissioner: Exhibit No. 7, consisting of two pages, will be admitted to the record.

*Cross Examination.*

By Mr. Miller:

Q. Turn to Exhibit No. 5, Mr. Ink, and refer to the portion of the exhibit marked turbine room, No. 2 turbo is marked as having a capacity of 2500 KVA? A. That is an error. It should be marked 5000 KVA.

Q. That should be 5000 KVA? A. Yes.

The Commissioner: Let the witness correct the marked exhibit.

*John B. Ink—For Respondent—Cross*

(The witness corrected the marked exhibit.)

By Mr. Miller:

Q. Which turbo is connected with the steam heating system?

A. No. 1.

Q. And what is No. 2 used for? A. No. 2 is used as standby, and it is occasionally used for power factor correction operating as a synchronized condenser.

Q. Mr. Ink, in the first part of your testimony you referred to various construction projects with which you had been connected, did I understand you to use the name of Pennsylvania Public Service Company? A. Penn Public Service Company, Johnstown.

Mr. Miller: I would like to defer further cross examination, Mr. Commissioner, until we have had an opportunity to study the exhibits put in by Mr. Ink.

Mr. Miles: That is as far as the respondent is able to go today for the reasons that I have heretofore given.

The Commissioner: You are not prepared to cross examine until you study the exhibits, I take it?

Mr. Miller: I can proceed with some general questions, but I think it would be in the interest of speed and orderly procedure to postpone the cross examination.

The Commissioner: That would not require a repetition of questions however.

Mr. Miller: I would have to have the witnesses back again.

The Commissioner: It would be time wasted to go ahead now. We will adjourn this hearing for the purpose of studying the exhibits of the respondent by the Commission's representatives, and set the case down for further hearing on March 10, 11 and 12, at which time, as I understand it, the respondent will be prepared to proceed with the balance of this direct testimony.

Mr. Miles: That is correct, sir.

The Commissioner: I forgot to say that sometime

*Colloquy*

during the early part of next week the companies representatives in this case will be advised as to the Commission's ruling on the matter that I ruled on this morning.

Mr. Miles: All right, sir.

May we be advised, Mr. Miller, at some reasonable time in advance of March 10, how many of these witnesses associated with the staff of Day and Zimmerman you want to have back here and available for cross examination, I am not asking about Mr. Seelye, he will be here at all times throughout the case, but certain of these men who worked on the reproduction cost estimates will only be here when you desire them for cross examination.

The Commissioner: Mr. Miles, I understood, perhaps erroneously, from what you said that on the 10th you would be ready to proceed with accounting testimony. That would take a considerable length of time.

Mr. Miles: That is right, sir.

The Commissioner: Wouldn't it make for more orderly procedure if Mr. Miles went ahead with the balance of his testimony on the 10th?

Mr. Miller: Yes, I think so.

Mr. Miles: I think it would, Mr. Commissioner.

The Commissioner: How long do you anticipate, I am not attempting to hold you to it, how long do you anticipate that will take, Mr. Miles? A couple days?

Mr. Miles: Yes, sir, possibly three or more probably two.

The Commissioner: Then it is understood that anyone that Mr. Miller desires for cross examination during that week may only be required to be here on Friday of that week?

Mr. Miles: All right, sir.

The Commissioner: You take Wednesday and Thursday for your accounting testimony and he will notify you as to what he will want on that particular day.

Mr. Miles: I will be glad to do that.

Hearing continued.

*Colloquy*

Before Commissioner STAHLNECKER:

Wednesday, March 10, 1937.

Initial hearing in above matter before the Public Service Commission, Commissioner Stahlnecker presiding, at the office of the Commission, Harrisburg, Pa., on above date, beginning at 9:30 a. m.

PRESENT:

S. G. Miller, Esq., (Harrisburg, Pa.) for Public Service Commission.

Clarence W. Miles, Esq., (Baltimore) and

V. K. Keesey, Esq., (York, Pa.) for respondent.

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EVIDENCE IN BEHALF OF RESPONDENT, continued.

Mr. Miles: If the Commissioner please, your honor will recall that at the time the Commission was considering respondent's exhibit dealing with the reproduction cost new and less accrued depreciation of the respondent, attention was called to the fact by the sitting Commissioner that the item of organization expense had been inadvertently depreciated, and we therefore ask permission to substitute in the exhibit in question a new page 2 of the letter of transmittal, addressed by Day and Zimmerman, Inc., to the York Railway Company, under date of January 26th, 1937 and signed by Theodore E. Seelye. The only difference in the new page is that it carries the correction resulting from not depreciating the organization expense.

We likewise ask permission to substitute in the exhibit in question a new page 1, a new page 484 and a new page 498, which do precisely the same thing, correcting the error existing there with respect to the depreciation of organization expense.

*T. E. Seelye—For Respondent—Direct*

Mr. Miller: I do not think we will have any objection at all. I would like to look at the corrections.

Mr. Miles: I understand they are not in evidence but errors exist in them and I ask permission to correct them because Day & Zimmerman do not want to have in the files of the Commission figures which are not properly there. I am quite clear that the Commission has ruled that anything in that volume relating to reproduction cost of the railroad company, the steam heating company or the bus company is not properly in evidence in this case.

The Commissioner: The sheets making the corrections as indicated by Mr. Miles will be admitted to the record. All of the corrections are purely changes in mathematical computations.

Mr. Miles: Yes, sir; there is nothing else involved.

The Commissioner: I shall state for the record any corrections with relation to the Edison Light and Power Company will be admitted to the record, and any corrections as to the other three companies will be allowed to be made in the tabulations which are in the same volume.

Mr. Miles: Will it be understood that the stenographer will insert the pages just referred to in their proper places in the reproduction cost estimate exhibit?

The Commissioner: Yes.

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T. E. SEELYE, being recalled testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. I hand you a tabular statement entitled "Edison Light and Power Company, summary of reproduction cost estimates, tabulation showing derivation of property used and useful in the Public Service", and I inquire as to whether that was prepared under your supervision? A. Yes, sir."

Q. Will you state what the statement in question is intended

*T. E. Seelye—For Respondent—Direct*

to reflect? A. The statement shows in the first column the dollars of reproduction cost of all the assets of the Edison Light and Power Company, as set forth in the reproduction cost estimate, exhibit No. 2. The second column shows a deduction for property not used or useful in the Public Service. There are attached to this page sheets which describe this property, pages 2, 3 and 4, the total of this property being \$71,673.00. Following this in column 3 is property which we included in the reproduction cost estimates, but which we found in the course of our studies of the company's books should be the original cost estimates, actually the property of the railways. This property is described on pages 5 and 6 and include some equipment in the generating station, one of the rotary converters, foundations and other electrical equipment, poles and fixtures and overhead conductors. The total of these was \$50,687.00. We have eliminated them in this exhibit from the total of the reproduction cost estimates previously submitted, leaving a balance of estimated net useful property of \$5,572,434.00, and less accrued depreciation the sum of \$4,950,609.00.

Q. By way of summarization, as I understand this exhibit in question, you have deducted everything in there property inventoried and set forth in respondent's exhibit No. 2, two classes of property, first, that which is used and useful by the respondent in the rendition of its electrical service, and, second, that which is used and useful by it, but which is owned by the York Railway Company? A. Yes, sir.

Q. The attached sheets constitute merely the supporting data for the evaluation that has been placed after each of the respective property accounts shown on the left? A. Yes, sir; they are the same as the sheets in respondent's exhibit No. 2.

By the Commissioner:

Q. Mr. Seelye, this exhibit sheet or cover sheet is a sheet which is comparable to page 1 of the exhibit that was produced at the last hearing? A. Yes, sir.



*T. E. Seelye—For Respondent—Direct*

By Mr. Miles:

Q. Now, the total reproduction cost of all the property new as shown by the last exhibit was \$5,694,000.00. The reproduction cost by the elimination of these two items is reduced to \$5,572,000.00, or a reduction of \$122,000.00? A. That is correct.

Q. While the depreciated reproduction cost of the property less accrued depreciation is only reduced \$45,000.00, is that correct, from \$4,995,000.00 to \$4,950,000.00? A. Yes, sir; I think that is because of the fact that under the second column of this cover sheet of this exhibit the items marked as "Not useful" were given zero value in the total of reproduction cost depreciated.

Q. In other words, the fact that they were not used and useful led to— A. To 100% depreciation, but on the basis that properties are not used and useful, it does not destroy the reproduction cost estimate—

Q. There would be a further adjustment in the last column, namely reproduction cost due less depreciation, as compared with page 1 of respondent's exhibit No. 2, because respondent's exhibit No. 2 as originally filed inventoried depreciated organization expense? A. Yes, sir.

Q. Mr. Seelye, isn't that a fact that all of the property which appears on pages 5 and 6 of the exhibit or statement to which you have just referred constitutes all of the property that is actually used and useful by the respondent in the rendition of its service? A. Yes, sir, it does. This property has been in use by the electric company, most of it, for a great many years.

Q. The only reason that you have deducted it from the rate base is because it is owned by the York Railways Company? A. That is right.

Q. There is intended to be no suggestion on your part that the property is not useful to the Edison Company? A. No, sir; it is not so described. It is described as property owned by the York Railways Company.

*Harry A. Reed—For Respondent—Direct*

Mr. Miles: We offer in evidence the exhibit to which the witness has just referred, which has been marked by the stenographer respondent's exhibit No. 8.

The Commissioner: It is admitted to the record.

Mr. Miles: You may cross examine, ~~Mr.~~ Miller.

Mr. Miller: I would like to postpone cross examination at this time, Mr. Commissioner. I might state that we only got the copy of the transcript of testimony Tuesday evening, and we hardly had a chance to study it, and we are not prepared to cross examine at this point.

The Commissioner: Do I understand you will not be in a position to cross examine on any of this testimony so far during this hearing?

Mr. Miller: Not today, Mr. Commissioner, but we can by tomorrow or the next day.

Mr. Miles: That is quite agreeable to me because it will take us all day to present our testimony. It is a fact that the transcript did not reach any of us until yesterday afternoon. I attempted to read a good part of it yesterday evening for the purpose of making corrections. The only reason I am making reference to this is because we would like to have an opportunity to make corrections in the transcript.

The Commissioner: You will be given that opportunity.

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HARRY A. REED, being recalled, testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Reed, I believe that you previously testified that you were associated with the engineering staff of Day & Zimmerman?

A. Yes, sir.

Q. I hand you volume entitled "Report No. 3234-A on the York Railways Company and subsidiary Companies to York

*Harry A. Reed—For Respondent—Direct*

Railways Company, York, Pa.", and I ask you if you equally collaborated with other associates of the staff of Day & Zimmerman in the preparation of that report? A. That is correct.

Q. Will you state for the record what the report is intended to disclose? A. This report is intended to cover the Day & Zimmerman, Inc. estimate of the original cost of the Edison Light & Power Company of York, Pa., The York Railways Company, The York Steam Heating Company and the York Bus Company.

Q. For the time being confine your answers solely to the properties of the Edison Light & Power Company, the respondent. Will you state the property accounts involved in that report that you had charge of in connection with the preparation of this estimate? A. My own work on this report refers specifically to account No. 204, land account; No. 207, power plant structures; account No. 209, boiler plant equipment; account No. 210, steam engines and turbines; account No. 211, turbo generators; account No. 214, coal storage and weighing equipment; account No. 215, other power plant equipment; account No. 237, transmission system land; account 240, transmission system structures; account No. 275, general office land; account No. 276, other general land; account No. 278, general office structures; account No. 279, other general structures; account No. 280, general office equipment; account No. 281, general store equipment; account No. 282, general shop equipment; account No. 284, general garage equipment; account No. 285, general laboratory equipment; account No. 286, general tools and implements.

Q. Now, Mr. Reed, in addition to personally preparing the estimates implaced within the property accounts that you have just enumerated, do I also understand that you had general supervision of the preparation of this entire report? A. Yes, sir.

Q. Before we begin to consider specific accounts, will you state in a general way the methods that were employed in reaching your estimates of original cost of the property of respondent?

A. We started with the inventory of the property which is included in exhibit 2 in this case.

Q. That is respondent's exhibit No. 2? A. Yes, sir; that is

*Harry A. Reed—For Respondent—Direct*

correct. With that list of items of property we then proceeded to search in the company's records, their books, work orders, minute books, old bills and other available data, for the information that would give us the amounts expended by the company in various years, relating to the items included in our inventory.

Q. Now, refer to page 2 of the letter of transmittal in the original cost estimate. Will you state for the record the conclusions reached by Day & Zimmerman as to the original cost of the property of the Edison Light & Power Company? A. The estimated original cost of the Edison Light & Power Company for direct costs was \$4,164,769.00; the indirect costs were \$850,175.00; the total costs were \$5,014,944.00.

Q. Mr. Reed, refer next to the accounts that you personally prepared and take them in the order in which you have stated them for the record. Will you please state the method followed by you in reaching your estimate of the original cost of land as embraced within account No. 204 relating to the generating system? A. In analyzing the original cost of the land included in account No. 204, generating system, we had the deeds for every parcel of land included in this account. Information included in these various deeds disclosed to us the costs of the land at the time of acquisition and the costs of the recording fee relating to that particular parcel. The costs thus obtained are the costs that we have used relating to the descriptions included in account No. 204 in this study.

Q. There must have been some incidents, were there not, where the instruments of conveyance did not disclose the consideration paid by the grantee, and under those circumstances where did you get your information? A. We consulted the books of the company to verify that no additional costs over those mentioned had been incurred, and also to supply any information that we needed for our original costs study that was not clearly stated in the original conveyance.

Q. The only additional cost, so to speak, added to the cost of the land itself which you included was the cost of recording the instrument? A. That is correct.

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Q. Do you understand that that recording cost is paid by the grantee? A. Yes, sir.

Q. The next item relating to land is account No. 237, which is a part of the transmission system. Did you follow the same procedure there that you did in connection with the land involved in account No. 204? A. The procedure is identical for this account.

Q. For account No. 275, which is general office land, and account No. 276, which is other general land, I assume the same system prevailed? A. That is correct.

Q. Will you state for the record, Mr. Reed, your estimate of original cost for account No. 204? A. Our estimate of original cost for account No. 204, steam generating system, land, is \$29,224.00.

Q. For account No. 237, relating to land in the transmission system? A. Account No. 237, the estimated original cost is \$12,672.00.

Q. For general office land, embraced within account No. 275, you found what? A. Account No. 275, \$50,490.00.

Q. For account No. 276, relating to other general land? A. For account No. 276, \$20,004.00.

Q. Refer to page No. 133, if you will, Mr. Reed, in the original cost estimate, and state how you arrived at the figure of \$15,484.00 for the land, the building site located at 27 West Market Street. That is the site of the company's office building? A. Yes, sir; there are actually two deeds in the company's possession covering the transfer of the land and building at that location to the Edison Light and Power Company. One deed relating specifically to land is in the amount of \$15,481.00, and there is a recording fee of \$2.65 attached to that deed, which gives a total of original cost of \$15,483.65, but as we are not dealing with the odd cents in this report, that has been rounded out to \$15,484.00.

Q. The basis of the \$15,481.00 was the original record of the company itself? A. Yes, sir.

Q. In other words, the record shows that is actually what they paid for it? A. Yes, sir.

Q. Having illustrated the procedure within the items relating



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to land, Mr. Reed, will you refer next to account No. 207 for structures, the details of which are set forth, as the same relate to power plant, beginning on page No. 2 of the exhibit? Will you now state how you determined the original cost of the structures included within that account? A. We made a careful search of the company's records to ascertain the expenditures that they had made from time to time in constructing the steam power plant structure. For a part of this work the information was very clear and accurate. That covers the period from the year 1911 up to the present time.

Q. Do you mean by that observation that the records for the company are complete and accurate with respect to the costs incurred by them from 1911 to date? A. Yes, sir; relating to this specific building.

Q. As relating to the structures embodied within this account? A. Yes, sir, that is correct. Prior to 1911 the problem of identification of expenditures was a very difficult one and we were forced to resort to an estimate for that purpose. Our basis on the estimate was, first of all, to take the building in its entirety. We made a plan of that. The plan was divided into various units of property following the years in which those sections were actually built and constructed. We then took the inventory of the building which is included in respondent's exhibit No. 2 and subdivided that inventory to fit the requirements of the divisions by years on this plan which I have just referred to. Our next step was to analyze and tabulate the information that we had obtained from the various company records on the costs of labor and materials incurred in various years of the company's existence, from the period around 1890 up to the present time. With this information we were able to build a trend curve showing the change in price levels for the various years actually experienced by the company in its purchase for materials and labor in the City of York. We then used the trend curve information and applied it to the 1936 dollars for each specific division of property to obtain the related costs of those items of property as of the date that our study showed they were actually constructed.



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Q. Well now, to the extent that the books of the company recorded the actual cost incurred to them for the construction or acquisition of the property embraced within this account No. 207, you adopted the figures from the company's records? A. Yes, sir.

Q. To the extent that the books recorded them? A. Subject to such adjustments as were necessary to make the book or work order description conform to our actual inventory description.

Q. Where the costs were not so disclosed or recorded on the books of the company, do I understand that you applied material prices and labor prices actually experienced by the respondent during the years that the particular construction took place? A. That is correct.

Q. So that the ultimate result that you reached for this item is an estimate in part but it is, is it not, an estimate based on actual costs experienced by the company during the particular time in question? A. That is correct.

Q. It is not an estimate based on quotations received from some manufacturer or material people? A. No, sir; not in any case.

Q. Will you refer to page 4 of the volume which has to do with structures forming a part of the steam generating plant? The first item on that page is described as a new boiler room, the original cost of which you have estimated at \$30,846.00? A. Yes, sir.

Q. Will you state how you developed that last mentioned figure, referring, if you will, to your original work sheets? A. You will note that on page 4 at the end of the description of the new boiler room we indicate that construction of this was included in the years of 1911, 1914, 1916, 1919, 1930 and 1935. In 1911 the Edison Light and Power Company entered into a contract with the Westinghouse, Church Kerr & Company for the designing and construction, not only of the new boiler room but a part of the present turbine room. The records of that construction period are very complete but require considerable interpretation. I will explain that in this way. They clearly itemize the materials and equipment, which formed a part of the

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Westinghouse, Church, Kerr obligation to the Edison Company. All labor included for this construction work is given by total dollars and is not broken down for the various items of property or equipment. In other words, all of the payrolls during the period of that contract are lumped in one basket. The records clearly indicate the costs for the purchase of the various kinds of materials and items of equipment which are included in that work. The contract covers steam generating equipment, electrical equipment and buildings. It became our problem to take the labor costs incurred under these contracts and split our recorded amount for labor under the three general classifications that I have just mentioned, so many dollars to the steam account, so many dollars to the electric and so many dollars to the buildings. To that extent only the dollars shown in this report as relate here to the building, the electrical work or the steam work, are an estimated number, but the total of the three estimates agrees with the total shown in the contract's records, so that in that sense the allocation is an estimate but the costs of all three departments taken together are actual original costs.

Q. In other words, the expenditure of \$9,087.00 in 1911 is clearly a matter of record on the company's books? A. Not in that form. We had to take various pieces of information and bring them together to arrive at that amount.

Q. The various items that make up that aggregate sum are a matter of record? A. They are a matter of record.

Q. That same situation is true with respect to the items which you show for construction in connection with this particular structure in 1914, 1916, 1919, 1930 and 1935?

By the Commissioner: If you take all of your calculations together, your contracts, and your labor, the sum goes back to the total sum shown on the books of the Company?

A. Yes, sir.

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By Mr. Miles:

Q. I will repeat my previous question. (Previous question asked by Miles read by stenographer.) A. The same conclusion as to the source of our information, although the work done by Westinghouse, Church Kerr & Company did not continue after the year of 1914, and it was necessary for a couple of years to refer to the company's work orders showing the work required.

Q. Again, adopting the Commissioner's method of expression, you took the various component parts, which added together reached those total figures for those particular years? A. Yes, sir.

Q. There is just one other item in that account that I would like you to touch briefly on because it too is a substantial item, brick structure in the rotary room, shown on page 4. The estimated original cost of this was \$19,439.00? A. Yes, sir.

Q. What did your work sheets show with respect to that particular unit to be? A. Our work sheets show that we were unable to find any specific information that could be used for the combination or estimate of the original costs on the company's books for the only construction involved in that structure. I refer particularly to the construction in the year of 1897, of which we have an estimated cost of \$8,066.00. Whether the records have been lost or whether in those days they made an attempt to keep a record in an identifiable form for that purpose, I don't know, but we were forced to estimate the original cost on the basis of the trend information that I have previously described. We in this case used the inventory which we made and which is included in respondent's exhibit No. 2, and priced that inventory with 1936 dollars for the type of a building which we have identified as having been built in 1897. These dollars were translated by means of our trend data to 1897 dollars, with the result that our estimate shows \$8,066.00 as the estimated cost for the year of 1897.

Q. With the information or lack of information, as you care to put it, available, do you know of any other way that will

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estimate the original cost of that structure for that year could be made except on the basis that you followed? A. I do not know of any other accurate method than the one that we followed. We were particularly fortunate in this case in finding frequent mention in various years of the purchase price of various of the essential elements of construction and labor that we found in that particular room, and so I think that our estimate is as accurate as it is possible to make it.

Q. Will you refer now to account No. 240 which is transmission system structures? What was the method adopted there in arriving at your estimate of original cost? The total, I believe, appears on pages 53 and 54 of the original cost estimate? A. The estimate of the original cost that we have shown for account No. 240, transmission system structures, is the actual original cost experienced by the company and taken directly from the company's books or work orders.

Q. In other words, you did find for structures involved in the transmission system sufficient original records in the company's files to submit definite ascertainment of the original cost of those structures? A. Yes, sir; I might add that all those structures were all completed in the later period of the company's existence, from 1923 on.

Q. Just to illustrate, Mr. Reed, refer to the first item on page 53, namely the North Park Alley substation building, the original cost of which is estimated at \$14,538.00. Refer to your work sheets and tell us what you found on the company's books to support that item. A. As a matter of fact the work sheets and this sheet are identical, in that it indicates that the total dollars was directly taken from the company's books for the total cost of that substation.

Q. In other words they had vouchers showing that they actually paid that? A. Yes, sir.

Q. The only other item of any consequence is the North Park Alley substation, which is the second item, and for which you have an estimated original cost of \$3,811.00. Did you find the same supporting data to support that estimate that you found for the first item? A. The information obtained there is

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a matter of record. However, we were forced to make an estimate by allocation for one of the minor items included. There is a company work order which covers the cost of fencing both the North Park Alley substation and the Spring Grove substation, for which they paid \$724.00. The fencing area of both stations is practically the same and we therefore divided that figure by two and included half of it for the North Park Alley substation and the other half for the Spring Grove substation.

Q. That is the only expense to which any estimate has been made involved in this particular item? A. That is merely an allocation rather than an estimate.

Q. It has no relationship to the ultimate cost you reached but merely as to the allocation between the units? A. Yes, sir.

Q. The next item of property account containing any structure is No. 278, general office structures, the details of which appear beginning with page 135. Will you tell us what method you adopted for reaching your estimates as shown on that page?

A. Our estimate for the original costs of the general office structure at 27 West Market Street is entirely taken from the company's records. While this estimate indicates construction in 1927, actually the building was built a good many years prior to that time, but was acquired by the Edison Light and Power Company in 1927, and the original cost or costs which go into the amount making up the \$85,310.00 which we have shown for that figure includes \$31,123.00 that the company paid to the Suburban Land Company, plus \$54,187.00, which represented the costs of improvements and modifications.

By the Commissioner: In 1927?

A. Yes, sir; the remaining dollars in our estimate for 1928, 1934, 1935 and 1936 are figures taken from actual company records of expenditures for improvements or modifications in that office building.

By Mr. Miles:

Q. Let us refer to the last item which includes any structure, account No. 279, other general structures, and tell us the basis



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upon which you reached your estimate for the property placed within that account? A. The first item in this account relates to a warehouse at 147 West Philadelphia Street. This structure was originally built in 1916 on work order No. 151 at a cost of \$18,732.00. Subsequent additions covered by various work orders referred to in our working papers bring the total estimate for original cost to \$21,936.00. That building is entirely, the last item, taken from actual records of the company and does not involve any element of estimate.

Q. Referring to these various account numbers dealing with structures, and for the purpose of the record, will you tell me what your estimate on the original cost of the property embodied within account No. 207 aggregates? A. The estimate of the original cost for account No. 207, structures, is \$111,644.00.

Q. For account No. 240? A. Account No. 240, transmission system structures, the estimated original cost is \$20,843.00.

Q. For account No. 278? A. For account No. 278 the estimated original cost, general office structure, the cost is \$93,724.00.

Q. For account No. 279? A. Account No. 279, other general structures, the estimated original cost is \$24,121.00.

Q. Mr. Reed, in arriving at your estimates of original costs of the units of property embraced within the accounts that you have just enumerated, I should like to ask you whether or not anything is included in any of those estimates covering expenditures embodied within what we generally know as indirect or general overheads? A. There is nothing that I know of included in any of these estimates that could in any manner be called indirect or general overheads. That remark applies both to the costs taken directly from the company's records and those costs estimated by us.

Q. When we speak of indirect or general overheads, we are including, are we not, all items of expense embraced within accounts Nos. 288 to 296, inclusive, of the Commission's prescribed system of accounts? A. That is my understanding.

Q. While we are on this subject of overheads, you are generally familiar, are you not, with the results reached in the



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original cost estimate as the same relates to accounts 209 to 215, which is a part of the generating property? A. Yes, sir.

Q. Can you state of your own knowledge what has been included in those particular accounts for field office expense and supervision, that is, in accounts Nos. 209 to 215? A. The costs that have been included in accounts Nos. 209, 210, 211, 214 and 215 in general vary between 17.71% and 20.48%. The percentages were arrived at from an analysis of the actual records of the company and other information in their files for the periods during which this work was done.

Q. The books and the records of the company disclose that for the property embodied within the accounts that you have just estimated that the field office expense and supervision aggregated between 17 and 21 percent, did you say? A. Between 17.71% and 20.48%.

Q. May I ask you for the purpose of comparison what Day and Zimmerman estimated that field office and supervision expense to be in their report of the reproduction cost of this property? A. The Day and Zimmerman estimate of the reproduction cost is 12% for field office expense and supervision.

Q. Mr. Reed, let us refer next to these various items where you personally made the estimates relating to general equipment, starting first with account No. 280, having to do with general office equipment, and which appears at pages 140 to 165 of the report, and without meaning to suggest that you tell us from what source or sources you drew upon for all of these countless items under this account, will you state in a general way the method that you adopted for arriving at your estimate of original cost? A. We first examined the company's books in an attempt to find what the principal years of purchase for the innumerable items of office furniture equipment included in our inventory, were. That study showed that the majority of the items which we have included were purchased from the year 1926 to date. We then examined our own records or "Discount sheets" from various manufacturers of office furniture, fixtures and supplies, and made a comparison of the sale price for furniture in the various years from 1926 up until 1936. In addition to

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that there were some unusual pieces of equipment which are included in the inventory, such as an item of Cardex files, which stands out very clearly, and there we were able to identify the original cost paid by the Edison Company for that piece of equipment.

By the Commissioner:

Q. Or for a cash register? A. Yes, sir; and things of that type. Our comparisons were indicated to us that there had been but a very minor change from year to year into the general price level of office furniture and fixtures of the type encountered in the Edison Light and Power Company's office building and other structures. We therefore used the production cost prices included in respondent's exhibit No. 2, but without the addition of 5% for purchasing and insulation charge that we have included in the reproduction cost estimate, because we recognized the fact that this was piece meal purchasing over a period of years and there was no way of identifying exactly what those costs may have been.

By Mr. Miles:

Q. That constitutes substantially all of the items, doesn't it?

A. That method was followed for all of those general accounts referred to with the exception of the general garage equipment included in account No. 284.

Q. The method that you have described, you followed in the property placed within accounts 280, 281, 282, 285 and 286, is that correct? A. Yes, sir.

Q. I believe you started to make some observation as to the difference in your method of arriving at the estimated original cost of general garage equipment under account No. 284? A. Yes, sir; that was an exception to the rule which I have just recited. For account No. 284, general garage equipment, the dollars show in this exhibit our actual costs taken from the company's records, for all of the items included in this report, under this account.

Q. Will you give us the estimate of your original cost for

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account No. 280? A. The estimate for original cost for account No. 280, general office equipment, is \$55,000.00.

Q. For account No. 281? A. Account No. 281, general store equipment, \$3,376.00.

Q. Account No. 282? A. Account No. 282, general shop equipment, \$5,523.00.

Q. Account No. 284? A. Account No. 284, general garage equipment, \$61,662.00.

Q. Account No. 285? A. Account No. 285, general laboratory equipment, \$20,449.00.

Q. Account No. 286? A. Account No. 286, general tools and implements, \$4,213.00.

Q. Mr. Reed, did you enumerate among the account numbers for which you were directly responsible rights-of-way included within account No. 239? A. No, sir.

Q. Let us next take account No. 209 for boiler plant equipment, included as a part of the steam generating system, and tell us the source or sources from which your information was drawn to arrive at the estimates you have on that account? A. Our information for boiler plant equipment included in account No. 209 is taken from the company's records. My description of how we had used the company's records for the new boiler plant structure started in 1911. I described in detail our method of allocation of labor costs that were included in the contracts with the company, the contracts that the company had let to Westinghouse, Church Kerr & Company for the building and equipping of the boiler room and turbine room. The same comments apply in our allocation of labor included in this account for the work done by that contractor on the company's work order No. 55. The information which we have used as the basis for our estimate for the costs experienced by the company in acquiring the boilers and other items of equipment, were all included in the information backing up work order No. 55, and we have used the dollars that are shown in that information for this estimate. That same statement applies to boilers, stokers, soot blowers and other items that are now found in that boiler room. In addition to the information in the work order No. 55, we were also

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fortunate to find records and the actual contract price entered into by the company for various of these major items of equipments.

Q. Was the same work order involved in connection with boilers numbers 3 and 4, referred to on page 8 of the original estimated cost study, as were involved in boilers numbers 1 and 2 mentioned on the same page? A. No, sir; that work was done—

Q. You are referring now to items 3 and 4? A. Yes, sir; that was done in the year of 1914, also by the same contractor, Westinghouse, Church Kerr & Company, and the information is included on the company's work order No. 114.

Q. So that you were able to draw upon the original records of the company for the determination of the original costs of those two boilers? A. Yes, sir.

Q. Now, referring to account No. 210, Mr. Reed, relating to steam engines and turbines, will you tell us what you found the state of the company's records to be with respect to the original cost of the units or property in that account number, as shown on pages 15 to 16 of the report? A. The information which forms the basis of our estimate for account No. 210 is taken from company work orders, and information taken from minute books as related to the steam engines only. As regards the condenser unit on page 15 and the condenser intake and discharge conduits on page 16, that information is all taken directly from the company's work orders and other evidences of cost at the time the units were installed.

Q. You made some reference to the steam engine information having been indicated on the minutes of the company? A. Yes, sir.

Q. Do I understand that you found among the minutes of the Board of Directors some reference to the purchase of this engine? A. The minutes of the company, or the minutes of the Board of Directors, went into considerable detail about negotiations for the purchase of a steam engine and also the costs of installation, as was reported to the Board by the company offices during the period of construction.

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Q. With respect to the condenser unit and the item shown on page 16, namely a lot of intake and discharge conduits, wells, etc., the information for those two items you found among work orders and vouchers of the company? A. The majority of the information was obtained from the company's work order No. 114 in the year of 1914, a small part of it from work order No. 55 in 1911, and from work order No. 3,396 in 1922, all relating to these items of equipment.

Q. Let us refer next to account number 211, covering turbo-generators, listed on page 17 of the estimate of original cost, and tell us how you arrived at the sum of \$88,104.00 for the account shown on page 17? A. The estimate of original cost covering the insulation of the 4,000 k. w. steam turbine was made by analyzing the company work order No. 114 issued in the year 1914, in which the contract cost of the turbine is included. We ourselves estimated the cost of the turbine foundation and other minor items in connection with that, on the basis of allocation of the contract costs in a similar manner to that which I have previously described in connection with the Westinghouse, Church Kerr & Company contracts. The same comments apply to the 2,000 k. w. Westinghouse turbo-generator, except that the information was taken from the company's work order No. 55 in the year of 1911, work order No. 318 of the year 1931 and work order No. 4480 in the year of 1933. The item of turbo-generator exciter set, the estimate of original cost was all taken from the company's work order No. 55 of the year 1911.

Q. Referring next Mr. Reed to account No. 214, coal storage and weighing equipment, shown on page 47 of the estimate of original cost, upon what sources did you draw for your results as shown on that page? A. All of the information obtained by us relating to the original cost of the equipment included in account No. 214, was obtained from company work orders. The majority of the information is included on company's order No. 55 in the year 1911. The expenditures that were made in 1916 are covered by the company's work order No. 140.

Q. So that there is nothing really involved in the way of an



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estimate in this item, is there? A. I think this is entirely from original records and not by estimates.

Q. The last of your accounts, Mr. Reed, is account No. 215, covering other power plant equipment, as indicated on page 48 of the estimate. Will you tell us how you arrived at your total estimate shown on that page? A. Substantially all of the information leading to estimate of original cost for account No. 215 was taken from a study of the company's work orders, analyzed by us to determine the amount of labor relating to the costs of specific items of equipment. It was all actually encountered in the company's records.

Q. With respect to accounts No. 209, 210, 211, 214 and 215, you have already testified, I believe, that an examination of the company's records, showed that for field office expense and supervision there was a cost of between approximately 17 and 20 percent included for these direct overheads? A. There is one thing I would like to explain, Mr. Miles—

Q. Go ahead. A. The last pair of boilers installed by the company in 1916 and 1917 carries a different allowance for field expense and supervision than the others. Inadvertently I overlooked that when I was testifying previously. I want to make a correction. The facts are that the company's whole staff, using plans and some of the specifications that had been prepared for the installation of the first four boilers, undertook the installation of the last pair of boilers with their own forces, and as far as our analysis of their costs would reveal, their field office expense and supervision on those two units only was 5%.

Q. Have you made any estimate as to what the field office expense and supervision runs on all the property embraced within accounts 204 to 215? A. I haven't made a weighted analysis but the majority of boilers in those accounts will vary between seventeen and a fraction and twenty and a fraction percent.

Q. Will you for the record state your estimate of the original cost for boiler plant equipment embodied in account No. 209? A. Account No. 209, boiler plant equipment, estimated original cost was \$195,457.00.



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Q. For account No. 210, steam engines and turbines? A. \$48,490.00.

Q. For turbo-generators in account No. 411? A. \$88,014.00.

Q. For coal storage and weighing equipment in account No. 214? A. \$12,681.00.

Q. And last for other power plant equipment, in account No. 215? A. \$7,131.00.

Q. Mr. Reed, can you express any approximate opinion as to the percentage of your total estimate of the original cost of the respondent's property, which is supported from original records or books of the company? A. You mean can I state that for the entire property—

Q. First, on the accounts that you have testified to? A. On the accounts on which I have testified I would say that at least 85% of the boilers represent actual cost taken from the company's records for the items included in that inventory.

Q. With respect to the remaining boilers, those items, as I understand your testimony, have been arrived at either by relating 1936 dollars back to the date of installation from a trend and study made for that purpose, or adopting the actual expense incurred by the company in the dates of installation involved, is that correct? A. That is partly correct. I believe I testified that in the minor accounts covering office furniture and fixtures, etc., that we made comparable studies as revealed by discount sheets, catalogs of the company for the years 1926 to 1936, and that basis or that study, plus the spot check we were able to make on certain items that could be identified, we felt that the use of the cost to purchase in 1936 as an estimate of the original cost, was reasonable and we used that procedure.

Q. With respect to the general equipment, with respect to the use of 1936 dollars as of the dates of installation by the use of a trend, as distinguished from known original costs, is arrived at by constructing or determining the unit prices, based on the actual experience of the company as of the particular date of installation, is that correct? A. It resolves itself that way but the method is different. Our trend used relating to 1936 dollars under any given year was arrived at by establishing the unit

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prices. That gave us various points on the curve and we used that for each particular year.

Q. You have stated that about 85% of the dollars involved in the specific accounts with respect to which you have just been testifying, is supported by records for the company. Can you state what percentage of the total dollars shown on page 1 for the estimated original cost is supported by original records of the company? A. Referring to page one and including accounts 204 to 286, inclusive, I believe that probably 90% or better of the costs shown there are actually taken without estimate from the company's books.

Mr. Miles: He is your witness, Mr. Miller.

Mr. Miller: I would like to defer cross examination, Mr. Commissioner, until we have had a chance to study the testimony.

Mr. Miles: Your honor understands that I would like to make it clear at this time that the respondent, except for the ruling of the sitting Commissioner at the last hearing, would like to interrogate this witness and other witnesses with respect to certain matters relating to original cost of the property from the York Railways Company, the York Steam Heat Company and the York Bus Company, but I understand that the ruling of the Commissioner made at the last hearing denies us that opportunity.

The Commissioner: That is correct.

Mr. Miles: May we have an exception to that, of course?

The Commissioner: An exception is noted already on the record to that ruling and there will be now noted an exception after this proposed examination.

(Exception noted for the respondent.)

Mr. Miles: Respondent now offers in evidence and asks that it be identified and marked as respondent's exhibit No. 9, the estimated original cost of the properties of the Edison Light and Power Company, York Railways

*Colloquy*

Company, York Steam Heating Company and York Bus Company, the witness having testified only with respect to the properties referred to in the report as forming a part of that owned by the Edison Light and Power Company.

The Commissioner: Respondent's exhibit No. 9, insofar as it relates to the estimate of original costs of the Edison Light & Power Company will be admitted to the record. That part of the book which contains information just referred to, which relates to the York Railways Company, the York Steam Heating Company and the York Bus Company will be excluded from the record in accordance with the ruling made at the previous session, and an exception is noted for the respondent. I think I should say, however, that my ruling does not apply as to the admission to the record to any property of the York Railways Company used exclusively by the Edison Light and Power Company for transmitting electricity to other customers than the York Railways Company. I explained that specifically before.

Mr. Miles: So that we may understand each other, your honor, the respondent before it closes its case will offer an exhibit relating to the extent to which the respondent used, in connection with the rendition of its service, property owned by the York Railways Company.

The Commissioner: Will that be divided as to service to the York Railways Company and to others?

Mr. Miles: Yes, sir; the exhibit will show the use to which the Edison Company puts the property owned by the York Railways Company.

The Commissioner: Of course, I am prepared to admit that for the record, as indicated by my previous ruling.

Mr. Miles: Your honor will recall that respondent's exhibit No. 3 was a certified copy of a chart of certain tests made with respect to the boilers. The original charts are in the files of the company, and we asked that we be permitted to file in lieu of those original certified charts.

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photostatic copies, the same, and so at this time we ask permission to insert in the record as respondent's exhibit No. 3 photostatic copies of the certified boiler test charts to which I have referred.

Mr. Miller: I think that is in accordance with the arrangement at the time.

The Commissioner: That is correct. Photostatic copies of the charts will be substituted for the original exhibit in the record as respondent's exhibit No. 3.

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CLARENCE A. MITCHELL, being recalled, testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Mitchell you have testified you are associated with the engineering staff of Day and Zimmerman, Inc.? A. Yes, sir.

Q. Will you state for the record what, if any, accounts you were responsible for in connection with the preparation of respondent's exhibit No. 9, relating to original costs of the property of the Edison Light & Power Company? A. I was directly responsible for the original cost estimate in the following accounts: account No. 239, rights-of-way transmission; account 242, poles and fixtures, transmission; account 243, overhead conductors, transmission; account 244, overhead telephone system; account 245, underground conduits; account 246, underground conductors; account 254, rights-of-way distribution; account 256, poles and fixtures; account 257, overhead conductors; account 258, overhead transformers; account 259, transformer installations; account 260, overhead services; account 262, underground conductors, distribution; account 266, meters; account 267, meter installation; account 273, street lighting system, incandescent system.

Q. Referring to the first of the accounts which you have just enumerated, account No. 239, dealing with the rights-of-way

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forming a part of the transmission system, detailed on page 52, of respondent's exhibit No. 9, will you state the method employed by you in arriving at the original cost of the property in that account? A. The estimated original cost for account No. 239, rights-of-way, was taken directly from the company's work orders, which set up for the actual expenditures by months, both for labor, for acquisition and the costs of the rights-of-way and the cost of recording, shown on the work order.

Q. So that therefore the property embodied in that account is actually the original cost indicated in the company's record? A. Yes, sir.

Q. What did you find as the original estimated cost for the rights-of-way forming a part of the transmission system? A. The estimated original cost for account 239, rights-of-way, was \$2,708.00.

Q. Your next account, Mr. Mitchell, I believe is No. 242? A. Yes, sir.

Q. Relating to poles and fixtures? A. Yes, sir.

Q. Will you state the source upon which you drew for the estimates you made for property embodied within that account?

A. Account 242 relates to poles and fixtures in the transmission system. In arriving at our original estimated cost for this account we were able to identify each transmission line as was set up in our reproduction cost estimate and inventory, and by establishing these lines we were able to secure the exact costs from the company's work orders for each individual line. That was broken down on the work orders into the material, the labor, the sundries, and to those charges we added workmen's compensation, storeroom charges and the field office and supervision expense, and by that method we obtained the estimated original cost for each transmission line.

Q. Let us see if I understand you correctly. First, take your expense for labor as involved in this account No. 242. How did you arrive at your estimate of labor expense? A. The labor expense was taken right off the company's work orders in the months in which the money was spent.

Q. In other words, the work order itself disclosed on its face



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the amount of labor that was involved in dollars into the installation and erection of the different items? A. Yes, sir; by months.

Q. That was used by you in your estimate? A. Yes, sir.

Q. How about the material cost, was that also disclosed on the face of the work order? A. Yes, sir; the material was itemized so that you could definitely identify it, and the total amount spent for material each month was itemized on each work order.

Q. There was nothing conjectural, so to speak, in your estimates as to either material or labor? A. No, sir.

Q. You adopted the costs or prices disclosed on the work orders and records of the company? A. Yes, sir.

Q. Let us go back to what you have described as sundry expenses. First, what is involved in that? A. Sundry expense includes rental of equipment, expense for gasoline and oil in the operation of the equipment, meals and board for the various men, and other minor sundries, and those sundries are set up in the work orders as such expenditures by months.

Q. So again, there is no conjecture in that but the work orders, themselves, disclose the amount expended as a part of the sundry expense? A. Yes, sir, not only does the detail give you the money but the detail gives you the nature of the expenditure.

Q. You said that you added to the material labor and sundry costs a certain percentage for store room expense, workmen's compensation and field office and supervision expense. Let us take, first, the storeroom expense. Tell us how you arrive at the figure you used for that item? A. The company's books show that their actual charges for store room overheads for each year from 1925 to 1936,—we were able to determine the percentage allowed, that the company actually experienced in charging to those jobs for those various years. That percentage runs from  $7\frac{1}{2}\%$  to 18%.

Q. Just for the store room? A. Yes, sir; just for the store room overhead. That takes care of the unloading and distributing to the store room and the handling in the stores of all the material.

Q. Why should there be such a spread in that item? A. In certain years,—this was not in 1933,—it shows 18% of a store



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room charge. That, I believe, was due to the fact that during that period there was certain materials on which the freight, instead of being charged directly to the material itself, was charged into the stores, which gave us a much larger percentage for stores during that year. This is only one year in which that occurred. The rest of the percentages are around from nine and ten percent, and that is the reason for that one year being 18%.

Q. Those percentages are shown on the records for the company as expense actually incurred by the respondent? A. Yes, sir.

Q. There is nothing in the way of an estimate by Day & Zimmerman of what it might or should be? A. No, sir.

Q. The store room expense itself is constant is it not, the percentage varying in relationship to the number of poles that there might be— A. Yes, sir, you have a constant store room expense, and in addition to that if you have to increase it at any time those percentages increase, and as I say, in certain cases freight was charged indirectly against the store room.

Q. But the important inquiry is, the store room expense that you have stated is constant, which the records of the company indicate was experienced by the respondent? A. Yes, sir.

Q. Let us take the next item mentioned, namely, workmen's compensation insurance. How did you arrive at what was included for that item? A. Workmen's compensation insurance was taken from the company's records and experience. Those percentages from 1925 to 1936 run from 1.45% to as high as 6%. I might say in all of these items where we applied these two percentages, store room percentage and compensation insurance, that we applied the insurance applicable for that particular year.

Q. In other words, you applied the insurance cost experienced by the company for the year in question? A. Yes, sir.

Q. How about the item direct engineering and supervision? How did you arrive at the sum included attributable to that? A. That was worked out on the same basis, from the company's

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experience from 1925 to 1936 and the percentage runs from 5% to 15%.

Q. Lastly, with regard to account No. 242, under "estimate" you have the items of material, labor, sundry expense and direct engineering and supervision. They are all of the items that are involved? A. Yes, sir.

Q. With respect to all of them, as applied to your account No. 242, shown in respondent's exhibit No. 9, you have merely accepted the figures which the records or work sheets of the respondent disclose? A. Yes, sir.

By the Commissioner:

Q. At the end of each circuit you have a tabulation which includes four items— A. The store room expense is incorporated in the material and workmen's compensation is incorporated in the labor item. I would like to explain in connection with the percentages an exception for the meter and transformer accounts. Those percentages are 3% for the meter and transformers, for the direct engineering and supervision.

By Mr. Miles:

Q. They do not come in under account No. 242? A. No, sir, but it explains those percentages as applied to all of the accounts.

Q. Before we leave account No. 242 I wish you would refer to page 92 of respondent's exhibit No. 9, where you have an estimate of \$11,978.00 on the poles and fixtures forming a part of what you described as the Hallam circuit. Using that as an illustration, just review briefly how you arrived at your figure? A. As I stated previously, the amount of money in this estimate for each circuit or line was obtained from the company's work orders. This particular line, which is called the Hallam circuit, was obtained from the company's work order No. 298. To the expenditures, which go to make up the total cost or items as to the number of poles, cross arms, guy material and guy wires, etc., by dates in this work order, and the labor was taken off in the same manner, and the sundries, and to the material item, in 1930 and 1931 we added store room expense of 12½%.

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I beg your pardon, 10%, which was experienced by the company during those two years, and to the labor taken from work order No. 298 we added workmen's compensation, which in that year was 2.93%, and then the sundries were taken in the same manner without adding any percentage, and then adding to the total of those three items a percentage of 12½% for overhead, field engineering and supervision, which gave us a total of \$11,978.00 for that Hallam circuit.

Q. The 12½% for field supervision expense was shown on the books of the company as having been experienced by it? A. Yes, sir.

Q. As a matter of interest how many work sheets were involved or work orders were involved in the determination of the estimate of original cost of the Hallam circuit? A. Only one work order.

Q. For the entire circuit? A. Yes, sir. However, the work starts in April 1930 and runs through until April 1931.

Q. I suppose in some of the circuits there is more than one work order involved? A. Yes, sir.

Q. The same method that you have shown with respect to the Hallam circuit was followed by you in connection with all of the various circuits? A. Yes, sir; of the transmission lines.

Q. What did you find as the estimated original cost for account No. 242? A. The estimated original cost for account No. 242, poles and fixtures under transmission system is \$102,425.00.

Q. Let us take up the next account, account No. 243, dealing with overhead conductors that form a part of the transmission system, referred to on pages 99 to 105 of respondent's exhibit No. 9, and tell us how you arrived at the estimate indicated on those pages? A. In arriving at the estimate we arrived at for account No. 243, for the various transmission lines and circuits, it was arrived at by the same method as described in account No. 242. In other words, the work order in which the material and labor and sundries were taken from in account No. 242, there was also taken the amount of material, labor and sundries

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for account No. 243 in the same work order, under another account, however, but in the same work order.

Q. The same treatment of workmen's compensation insurance and field supervision expense was involved as in the other item? A. Yes, sir; account No. 243 is just the conductors and insulators. They were built at the same time as the line.

Q. What you really term estimated original cost, at least it relates to the property involved in accounts 242 and 243, is the known original costs as disclosed by the records of the company? A. Yes, sir; taken from the company's work orders.

Q. What did you find as the original cost of the property included within account No. 243? A. The original cost estimate of account No. 243, overhead conductors, transmission system, \$127,268.00.


Q. Referring next to overhead telephone system included in account No. 244, and indicated at the beginning of page 106 of respondent's exhibit No. 9, do I understand that exactly the same method was followed with respect to accounts 241 and 242 was likewise followed in relation to account No. 243? A. No, sir; not exactly. We did not look up the actual work order that this work was performed under, due to the fact it was only a small item, \$549.00 and we went directly to the company's books for that item.

Q. You did not check it against the work orders because it was an insignificant sum? A. Yes, sir.

Q. You have stated that you have included in your estimate of original cost for account No. 244 the sum of \$549.00? A. Yes, sir.

Q. The next account is No. 245 covering underground conduits, appearing at 107 of respondent's exhibit No. 9. What method did you follow for reaching your estimates for that property? A. In general that was the same as the accounts 242 and 243. In other words, we secured from the company the work order in which this underground system was actually installed, and we took from the work order the amount of material, the amount of money expended for labor and sundry expense, and

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the date of installation, and built up the original cost in the same method in which I have explained previously.

Q. Is there anything in the way of an estimate really involved in the cost of property included in account No. 245, or is it known book costs? A. That is known book costs. There is no estimate whatsoever in that account. They are the exact dollars as they appear in the company's work order.

Q. What did you find for the property involved in account No. 245, as representing the estimated original cost? A. The estimated original cost in account No. 245, underground conduits in transmission system, \$21,006.00.

Q. Would you refer to the underground conductors forming a part of the transmission system, shown under account No. 246, beginning at page 108 of the same exhibit? How did you arrive at your estimate for those units of property? A. The estimate for that account No. 246 was arrived at in the identical method as account No. 245. It was on the same work order that this was found except it was under a different account.

Q. Therefore, it is proper for me to say that this is known original cost and not an estimate? A. That is correct.

Q. What is the amount of original cost found for that item? A. Estimated original cost total for account No. 246, underground conductors in the transmission system, \$8,711.00.

Q. The next account, I believe, you are responsible for is account No. 254, relating to rights-of-way in connection with the distribution system. It is a very small item and appears at pages 109 to 112, respondent's exhibit No. 9. How did you determine the estimated original cost of those rights-of-way? A. That was taken directly from the company's books, actual expenditures for those rights-of-way.

Q. You were not required to make any estimate? A. No, sir, we were not required to make any estimate.

Q. What was the original cost that you found for the property embraced within that account? A. Total original cost for account No. 254, rights-of-way, distribution system, \$846.00.

Q. Now, the next account is the largest, I believe, of all of those of which you have had charge for supervision, and that



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is poles and fixtures in the distribution system, included in account No. 256, appearing at page 113 of respondent's exhibit No. 9. Will you refer to that page and describe what it is intended to show and give us the set-up so to speak, of the disclosure? A. Account 256, poles and fixtures in the distribution system, the original cost was obtained from the company's work orders, the company's maintenance records, and, to the material and labor and sundry expense items as found on the company's work orders, we added the percentages for the various years, to cover store room expense, workmen's compensation, field office and supervision.

Q. Percentages? A. Yes, sir.

Q. Actually experienced by the company for those given years? A. Yes, sir. In setting up this account No. 256, arriving at the original cost, we realized it would be impossible to identify the exact date in which each pole was installed. Therefore, we set up our 1936 inventory as a base. We deducted from that inventory each year the amount of materials found on the company's work orders.

Q. You mean the number of poles? A. Yes, sir; the number of poles, cross arms and guy wire, the major items of equipment in that account. The work orders were totalled up each year, as I have stated. This process continued until we had completely eliminated our inventory, and each year's expenditure as shown on page 113 of exhibit No. 9 shows the estimate for material, labor, sundry expense, direct engineering, totalled by years, and also shows the total for the entire account.

Q. Of course, what you are making here is an estimated original cost of the property of the respondent now used and useful? A. Yes, sir.

Q. For Public Service? A. The property that we actually inventoried, we attempted to find the original cost of that property, and by deducting from our inventory the amount of property installed each year, the company until our inventory was exhausted, it gave us in our estimation the most accurate method of determining the original cost of the distribution pole system.

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Q. All of the units of cost, so to speak, that is involved in this account number, are units of cost which have been obtained from the company's own records? A. Yes, sir; we have in our working papers, we have the work order numbers, for every dollar that is in these estimates, with the exception of a minor number of dollars, a small percentage of dollars, which we had to estimate the labor on for the maintenance. In other words, we were able to secure from the company their labor performances and unit costs during the various years and we secured from the stores issue cards the amount of material charged against maintenance, and the labor to install that material. Outside of a small amount of the estimate all of the dollars are actual dollars from the company's work orders.

Q. What is the total that you found for poles and fixtures under account No. 256? A. Estimated original cost total for account No. 256, poles and fixtures, distribution, \$598,739.00.

Q. Refer next to account No. 257, overhead conductors in the distribution system, beginning at page 114 of respondent's exhibit No. 9? A. Account No. 257, overhead conductors, distribution system, was handled in identically the same manner in which account No. 256 was handled.

Q. The underlying data relates to the same work order? A. Yes, sir.

Q. There is no difference in the approach or method employed in the two accounts? A. No, sir.

Q. What did you find for the estimated original cost of the property involved in account No. 257? A. Estimated original cost in account No. 257, overhead conductors, distribution system, \$504,634.00.

Q. What was the date of the inventory that was used for the purpose of this study? A. November 30th, 1936.

Q. That is the inventory too that has been used for the purpose of establishing the rate base in this case? A. Yes, sir.

Q. The next account with which you are concerned is account No. 258, relating to overhead transformers, beginning at page 115 of exhibit No. 9. What method was adopted in arriving at

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the estimate of original cost of the transformers? A. The method that we used in arriving at the estimated original cost for account No. 258, overhead transformers, was as follows: First, we took the company's transformer record cards. From those record cards we found out or determined the date of installation, the manufacturer's date, the date of manufacture and the manufacturer's make, the type of transformer. We tabulated those cards, summarized them into the various units of transformers by years, ranging from 1910 to 1936. Having established the years in which the transformers were either installed or manufactured, we secured the original cost from the company's purchase orders for those particular transformers in the particular years in which they were purchased. We were only able to go back as far as 1920 for the company's purchase orders. Prior to 1920 we secured from Westinghouse a quotation for the transformers, based on the kind of transformers that they would have supplied the Edison Light and Power Company, with their discount from 1910 to 1920.

Q. Let me ask you this, you were able to find from the books or records of the company itself the cost of the transformers purchased by them back to the year of 1920? A. Yes, sir.

Q. You were able to likewise ascertain from their records the cost of installation of those transformers, is that right, back to 1920? A. No, sir; that is a different account. Installation is a different account.

Q. You were able to determine the cost? A. Yes, sir.

Q. Back to 1920? A. Yes, sir.

Q. Back of 1920, to 1910, do I understand that you obtained the estimates from Westinghouse as to what they would have sold a comparable transformer to the Edison Light and Power Company, giving them the benefit of whatever discounts they enjoyed at the time? A. Yes, sir.

Q. You obtained from Westinghouse their price for those particular types of transformers? A. Yes, sir; to those purchase prices we added a percentage for direct engineering, which in the case of transformers, as I explained before, was 3%.

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By the Commissioner:

Q. Uniformly? A. Yes, sir; for all of the years I had that percent for direct engineering. To the material we arrived at the original cost by years from 1910 to 1936, of the overhead transformers.

By Mr. Miles:

Q. Why did you use a percentage of 3% throughout that period? A. That was the percentage we found from the company's records they had used for the transformer and meter accounts.

Q. You found that they actually experienced 3%? A. Yes, sir; I might state that their records only go back, as far as overheads are concerned, to 1925. I used 3% for all of the years prior to 1925.

Q. What did you find as your estimated original cost for overhead transformers in account No. 258? A. Estimated original cost for No. 258, overhead transformers, distribution system, \$394,091.00.

Recess until 1:45 o'clock P. M.

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AFTERNOON SESSION.

1:45 o'clock P. M.

CLARENCE A. MITCHELL, resumes stand.

*Direct Examination.*

By Mr. Miles:

Q. Referring next to account No. 259, which is overhead transformer installation, will you state how you arrived at your estimates for that? A. We arrived at the original estimate, cost estimate, for account No. 259, which covers the installation of overhead transformers, by estimating the labor on 2421 transformer installations. The labor was estimated by taking the

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actual unit price experienced by the company during those seven years, and arriving at a weighted average unit price for transformer installation, and applied that unit against the number of transformers installed. To that we added direct engineering of 10%, giving us a total estimated original cost for account No. 259, overhead transformer installation of \$16,537.00.

By the Commissioner:

Q. You say you used a weighted average of the labor cost during those seven years? A. Yes, sir.

Q. That included the worst of the depression years? A. Yes, sir.

Q. Therefore, the average certainly did not include many years of high labor costs apparently? A. No, sir.

By Mr. Miles:

Q. How about account No. 260 for overhead services, what method did you follow in forming your judgment there as to the original cost, appearing at page 117 of respondent's exhibit No. 9? A. In arriving at our estimate of original cost for account No. 260, overhead services, this account was handled in the same manner in which accounts Nos. 256 and 257 were handled, that is, by setting up our inventory as a base and deducting the amount of material and equipment found on the company work orders each year from that inventory until we had exhausted the inventory, and to the material items each year we added the store room expense applicable to that year, and to the labor we added the workmen's compensation insurance, and the sum total of material, labor and sundry expense, we added to that direct engineering applicable to that particular year, giving us a total by years, with an over-all estimated original cost totalling for account No. 260, overhead services, of \$156,837.00.

Q. The percentages that you have used there for supervision and direct engineering were those percentages in accordance with what you found to have been the experience of the company?

A. Yes, sir. They were percentages varying from 5% to 15% in the various years, experienced by the company.

*Clarence A. Mitchell—For Respondent—Direct*

Q. Let us take account No. 262, underground conductors, and explain how you arrived at your estimates for those units of property? A. In account No. 262, underground conductors, the estimated original cost was obtained direct from a work order to which we added various percentages for material, labor and direct engineering, to the actual material, and labor and sundry expense which was taken from the work order, arriving at a total estimated original cost for account No. 262, underground conductors, of \$7,025.00.

Q. Will you take up account Nos. 266 and 267, which comprise meters and meter installations, and tell us exactly what method you followed in arriving at your estimate of original cost there? A. In account No. 266, meters, and account No. 267, meter installations, the estimated original cost was arrived at by the same method that we arrived at the transformer account and transformer insulation account, and that is by taking the information directly from the meter cards, as to the date of installation; the type of meter and the manufacturer, and securing the prices from the company's purchase orders, from 1936 to 1920. On meters, prior to 1920, going back as far as 1909 the prices for those meters were secured from Westinghouse on the same basis that we secured the prices for transformers. That is, they were the prices for those particular types of meters during those particular years that they would have charged the Edison Light and Power Company, with their discounts. I might say that the amount of meters estimated on those prices by not taking the actual company costs but by taking the manufacturer's quotation for those years, is very small in proportion to the whole account. About 80% or 85% of the meters are from 1920 through to 1936.

By the Commissioner:

Q. Where you have the actual costs? A. Yes, sir; where we have the actual costs.

By Mr. Miles:

Q. There was only about 15% where you had to rely upon estimates from manufacturers, relating to the same type of



• *Clarence A. Mitchell—For Respondent—Direct*

meters used by the company and at the prices at which the company would have been able to purchase them? A. Yes, sir; that is true. I might say you do not have a great amount of fluctuation between meter prices over a number of years. They run very much the same straight through, it is a question of odd cents.

Q. What did you find to be the estimated original cost of meters in account No. 266? A. Estimated original cost, account No. 266, meters \$292,681.00.

Q. Will you tell us how you arrived at your estimate of original cost of installation of the meters, which is included within account No. 267? A. Estimated original cost for account No. 267, meter installation, was arrived at by estimating the labor on approximately 30,000 meter installations. That labor was estimated in like manner as transformer installations were estimated, and that is by taking the actual unit prices over those seven years, and applying that weighted average unit price to 30,000 meters, and to that labor we added direct engineering to 10%.

By the Commissioner:

Q. Apparently the labor cost of a meter was—— A. 94¢ a meter.

By Mr. Miles:

Q. Again you were in a period largely in low price levels as relates to labor costs? A. Yes, sir.

Q. What was your total estimate for the meter installation in account No. 267? A. Total estimate of original cost of account No. 267, \$34,065.00.

Q. Turn to account No. 273, municipal street incandescent system. Tell us how you arrived at your estimate of original cost for that property? A. The estimate for account No. 273, municipal street incandescent system, was arrived at by the same method in which accounts Nos. 256 and 257 were arrived at, that is, by taking our inventory as a base and deducting each year the amount of material found on the company's work orders, continuing that process until the inventory had been

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completely extinguished to the total material and the total labor and sundry expense, percentages were added each year comparable to the percentages used and experienced by the company for store room expense, workmen's compensation and field supervision and engineering, giving a total by years for the street lighting system, a grand total for the account, the estimated original cost of account No. 273, municipal street incandescent system, of \$216,014.00.

Q. In making your estimates of original cost of the various units of property embraced within the accounts regarding which you have been testifying, have you included anything to take care of what are commonly known as indirect or general overhead? A. No, sir; there is nothing in any of the accounts that I have estimated that includes the item of indirect overhead.

Q. So that there is no possibility in your opinion of anything being included within your estimates of original cost for expenditures or costs incurred in connection with overheads within accounts Nos. 288 to 296 of the Commission's prescribed system of accounts? A. Yes, sir; there is no duplication in any of my accounts.

Q. Have you given some thought to the study or determination of approximately what percentage of the total dollars involved in your estimates was obtained from the original records of the company itself? A. I haven't actually estimated the exact percentage but I can give you an approximate figure.

Q. Alright, give me an approximate figure? A. I would say that we have obtained from the company's work orders and records 95% to 96% of the amount included in the various accounts for which I am responsible.

Mr. Miles: That is all.

Mr. Miller: I would like to defer cross examination at this time, Mr. Commissioner.

*A. B. FAVOR—For Respondent—Direct*

A. B. FAVOR, having been recalled testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. You have previously testified that you were associated with the engineering staff of Day & Zimmerman, Inc.? A. Yes, sir.

Q. You have heard the testimony here today with respect to respondent's exhibit No. 9, which was an estimate of the original cost of the respondent property? A. Yes, sir.

Q. Will you tell us for what account numbers you have been responsible in connection with the preparation of that report?

A. I have been responsible for account numbers 212, other electric generators; 213, other electric equipment; 241, sub-station equipment; 274, other utilization equipment.

Q. Referring first to account No. 212, which relates to other electric generators, which appears on pages 18 to 20 of respondent's exhibit No. 9, will you state exactly the method which was followed by you in determining the estimate of original cost indicated on those pages? A. A study of the company's records was first made to find out what work orders were involved in this account. Those work orders were pulled from the files and analyzed, by comparing with my reproduction inventory to find out just which equipment mentioned in the work orders was new in place and in use. The dollars shown as cost of purchasing and installing of the equipment was then taken off and accumulated by stations.

Q. I notice on pages 18, 19 and a part of page 20 of respondent's exhibit 9 are listed properties, units of properties, and under the column headed "estimated original cost" nothing has been inserted there representing the estimated original cost of each of the particular units. Will you tell us why that is true with respect to this one account in the report? A. That has been done to show in detail the equipment covered by the dollars shown as the total for that particular station. The reason for not putting dollars after each item was because here they are inventoried by items of equipment, but they were not necessarily

*A. B. Favor—For Respondent—Direct*

installed in that manner. They might have been installed fractionally perhaps.

By the Commissioner:

Q. You mean as to the rotary converters, shown on page 18, it was impossible to determine for which part of that equipment or other items you found on the work sheets were used for one or the other of the converters? A. Yes, sir.

By Mr. Miles:

Q. In other words, on page 20 you show the total estimated original cost as what? A. \$101,685.00.

Q. That property is made up of all of the various generators and condensers and converters and other units detailed on pages 18, 19 and 20? A. Yes, sir.

Q. But it was not possible to determine the exact date of installation of all of the specific units that made up that unit of property, or all of the integral parts that made up that unit of property? A. Not without going into very great detail.

Q. How did you determine the price of \$101,685.00 for the generators listed on pages 18 to 20, inclusive? A. I located all of the work orders involved in the installation of the items of equipment listed on pages 18, 19 and 20, and tabulated their costs by years. Therefore, on page 20 you will note that the work orders during 1903 totalled \$45,500.00, and so on down to 1936, with the following item unallocated. That item is the dollars which I have estimated out of the total of \$101,685.00 and covers items which I could not find in these work orders mentioned, but which I know are there to date.

Q. So that you found substantially work orders for all but \$2,500.00. A. Yes, sir.

Q. You found property to represent that \$2,500.00 but nothing on the work orders to show its cost? A. Yes, sir.

Q. You then proceeded to estimate that property in what way, generally speaking? A. Just by my own experience as to what that equipment should have cost roughly over the years that it was built. It is a very small proportion of the total.

*A. B. Favor—For Respondent—Direct*

Q. About 21½%? A. Yes, sir; I did not feel that it was necessary to break it down any further.

Q. What did you find to be the estimated original cost of the property embraced within account No. 212? A. \$101,685.00.

Q. Account No. 213, other electric property, which appears at pages 21 to 46 of respondent's exhibit No. 9, what method did you adopt for determining your estimate of original costs of that group of properties? A. The same method has been followed in handling account No. 213, other electric equipment, all the way through.

Q. In other words, on page 46 is shown the dates of construction, the acquisition of the various units of property embodied within this account? A. Yes, sir.

Q. You found work orders among the records of the company to show the expenditures set forth on page 46 as having been made during these particular years? A. Yes, sir; with one exception. You will find 1903 has an item of \$25,000.00. I could not find a work order for that item. That equipment is three rotary converters which were installed after 1903 and are still in existence and in use. I did find the actual bills for these rotary converters and the bills for the material, the labor and miscellaneous equipment to go with them, to a total of \$25,000.00.

Q. How did you arrive at your estimate of labor price for a piece of work in 1903? A. I used the percentage, or perhaps it was not a percentage, it was a number of dollars, against the material. The material in this case came to \$18,000.00. Therefore, there is \$7,000.00 left to cover the installation of this equipment and the miscellaneous material which in my judgment was conservative.

Q. The only other of the long string of estimates on page 46 that is unsupported by any work orders is the estimate of \$10,000.00 which you have termed "Unallocated", and which falls immediately after the 1936 expenditure? A. Yes, sir.

Q. How did you arrive at that \$10,000.00? A. That is simply an estimated figure to cover the items not accounted for in the work orders which I studied. I find that in charging to the accounts in the past, the company has often times not charged

*A. B. Favor—For Respondent—Direct*

their work in accordance with the present classification of accounts, on such things as conduits, also foundations, and certain other structures, and therefore rather than studying a great many work orders other than the ones involved in my own accounts, I have estimated the dollars to cover such items. In this case it is \$10,000.00 which is a round figure.

Q. It is but a fractional part of the total amount dollars involved under this property? A. Yes, sir.

Q. What did you find to be the estimated original cost for the property embraced in account No. 213? A. \$255,697.00.

Q. That brings us to account No. 241, substation equipment, which appears on pages 55 to 87, of respondent's exhibit No. 9. Will you state the method employed by you for determining your estimated original cost for that group? A. The method used for account No. 241 is the same as has been described for accounts Nos. 212 and 213, except in this case it is done by substations. It happens that 212 and 213 were at one location, a central plant.

Q. Did you find here the years in which the particular units were constructed? A. Yes, sir; this account involves substations only. Most of them have been built within the last ten years. Also most of them have been built on comparatively few work orders. There are two or three substations which have been built on a single work order.

Q. Referring to page 77, for the number 2 substation at Red Lion, do I understand from this report that that was constructed in 1929? A. Yes, sir.

Q. You took the work orders in the company's books to show the cost? A. Yes, sir.

Q. And so on page 79, where you deal with the Spring Grove substation you have listed the various dates when the construction took place and the amount of dollars, which the books of the company show were spent in each year? A. Yes, sir.

Q. Finally on page 84, with respect to the substation at West York, known as the West End substation, you there list the years in which the construction took place, and the amount of dollars that was spent in each one of those years? A. Yes, sir.



*A. B. Favor—For Respondent—Direct*

Q. Those figures were all taken from the books and records of the company? A. Yes, sir.

Q. What is the total that you found for the substation equipment embraced within account No. 241? A. \$415,256.00.

Q. Referring to the last of your account, account No. 274, dealing with other utilization equipment, pages 122 to 132 of respondent's exhibit No. 9, tell us what method you followed for arriving at your estimate for original cost? A. I have used the same method here as described in the other accounts.

Q. In other words, after each of the various pieces of equipment you have given the date of construction and the amount of dollars spent by the company in that year? A. Yes, sir; there are one or two exceptions. I might mention, for instance, the dental supply company on page 123, there is a transformer vault located at the dental supply company, and I could not locate the work order for building them because undoubtedly it was built and charged to some line construction account, and therefore I estimated the cost of that particular location, but you will find that the construction is unallocated in that case, as to years.

Q. I think there are only two or three instances under utilization system wherein you were compelled to make such estimates because of lack of work orders. What is the total that you found for that account? A. \$43,277.00.

Q. At recess today I asked you to refer to your work sheets and be prepared to state for the Commission approximately what the percentage of the total dollars included within the estimates of original cost, with respect to which you have just been testifying, was taken direct from the original work orders and records from the company. Can you tell us that now? A. Yes, sir; from 90% to 95% of dollars were taken from actual work orders and job orders of the company.

Q. Have you included in your estimates of original cost embraced within accounts 288 to 296 any expenditures for what are commonly known as indirect or general overhead? A. No, sir.

Mr. Miles: You may cross examine, Mr. Miller.

*T. E. Seelye—For Respondent—Direct*

Mr. Miller: I have no questions at this time, Mr. Commissioner.

T. E. SEELYE, being recalled, testified as follows:

*Direct Examination.*

By Mr. Miles:

Q. Mr. Seelye, you have previously testified that you were vice-president of Day & Zimmerman and that you have been in charge of the work of that company incident to these proceedings? A. Yes, sir.

Q. I believe you previously testified also as to the estimates made by Day & Zimmerman for what are commonly known as indirect or general overheads in its reproduction cost report? A. Yes, sir.

Q. I should like to ask you whether you were responsible for the expenditures or general overheads that are included in respondent's No. 7, dealing with original costs? A. Yes, sir.

Q. In order to avoid a needless duplication of testimony, may I inquire whether there is included within each of these accounts the same character of expenditures or costs that you previously testified to with respect to respondent's exhibit relating to reproduction costs? A. In general, yes, sir. There are two differences. In the account on organization, account No. 200, the account includes organization expense incident to the work of organizing this company and its predecessor companies. In other words, there was no inclusion in here for items representing the cost of organization with respect to the filing of prospective registration certificates before the Securities Exchange Commission, but it does have the organization expense of this company and its predecessor companies at the time they were brought into service.

Q. And the other exception—— A. The other exception was in the matter of taxes. My reproduction cost estimates included

*T. E. Seelye—For Respondent—Direct*

the taxes incident to the Social Security law and the Unemployment Insurance. We have eliminated that from consideration.

Q. With the exception of those two differences do I understand that the character of expenditures involved with respect to each of these accounts is the same as those with respect to those which you have previously testified in support of respondent's exhibit No. 2? A. Yes, sir.

Q. What did you find to be the organization expense of the company in considering its estimated original cost? A. For account No. 200 estimated original cost \$62,472.00; for engineering and superintendence during construction, account No. 288, \$124,943.00; for account No. 289, general officer's and clerk's salaries, during construction, \$41,648.00; account No. 290, general officer's and clerk's expenses during construction, \$31,236.00; account No. 291, office supplies and expenses during construction, \$10,412.00; account No. 292, law expenditures during construction, \$20,824.00; account No. 293, injuries and damages during construction, \$41,648.00; account No. 294, insurance against construction, \$10,412.00; account No. 295, taxes during construction, \$20,824.00; account No. 296, interest during construction, \$135,876.00; discount and expense, cost of finance, \$349,880.

Q. Did the examination by Day & Zimmerman looking through an ascertainment of the original cost of respondent's property indicate that it did actually experience the cost of character contemplated and embodied within these accounts? A. Yes, sir; however the accounts with respect to general overheads were not kept at all during the earlier days of the company's existence, or the existence of the constituent companies. In 1919, when the Commissioner's classification of accounts came into existence, and for several years thereafter they began to segregate and charge against these accounts. Actually the date was only to 1925 when charges were made against these various accounts which I have enumerated. During the period subsequent to that date an amount equivalent to \$362,613.00 was charged on the books to these accounts. This does not include the charges with respect to discount expenditures and the num-

*T. E. Sledge—For Respondent—Direct*

bered classified accounts under fixed capital. There is an additional item on the books in account No. 203 of \$63,125.00. We were unable to identify what was included in this amount of money. It may be general overheads or it may be actual fixed capital or it may be some other item which has gotten in here and we cannot identify the item as to what it is. It is, however, shown on the company's books at this time. The amounts shown under these various classifications on the company's books do not in any way compare with the amount which we have indicated in our exhibit. It may be due to the method which the company followed or for other reasons. There is no way to tell what the overhead expenditures were in the early days. They are not, however, in the same proportionate amount as the ones which we have set up. For accounts No. 288 to 296 we have an amount equal to \$437,723.00 in the original cost estimate, and for the same accounts on the company's books the amount is \$362,156.00.

Q. What was that difference? A. The difference is \$75,000.00. That is the amount in dollars between the two, but the amount shown on company's books apparently is only since 1925. There may be some small items covered prior to 1925. I think there is a small item deducted for engineering and an item for organization expense but that is all that seems to be here from an earlier date than 1925.

Q. You did find actually recorded upon the book expense properly taxable to one or more of the property accounts a sum within \$75,000.00 of what you have estimated to be the actual original cost for those items? A. Yes, sir, I might point out that I excluded as to account No. 200, as I said before. It shows only in the amount of \$447.00 on the company's books at the end of the past year. We have included in that account, as I previously stated, \$62,472.00 for organization expense since the inception of the original companies, comprising the present company.

Q. Do I understand what you have endeavored to do is to arrive at a judgment as to the original cost that the company has experienced in connection with these various property accounts?

*T. E. Bridge—For Respondent—Cross*

A. Yes, sir; I think it is judgment. It has some conception from the company's books as to amounts, but as to distribution, no; I think that that is a matter of accounting procedure.

*Cross Examination.*

By Mr. Miller:

Q. Can you give me a break down of your organization account No. 200? A. I can give you a break down in just a little while Mr. Miller. It represents, I might say,  $1\frac{1}{2}\%$  of the direct cost of the property.

Q. I am referring to exhibit No. 3, the original cost exhibit, account No. 200. That represents a figure,  $1\frac{1}{2}\%$ — A. Direct costs.

Q. What do you mean by "Direct costs"? A. Costs under items from 204 to 206.

Q. As I understood it, you did not get that figure of \$62,472.00 from the records of the company, but you got that by applying a percentage of  $1\frac{1}{2}\%$ ? A. Yes, sir. The books of the Company at present time show an item of \$443.00 or \$447.00 for organization expense.

Q. Why did you use  $1\frac{1}{2}\%$ ? A. That represents judgment,  $1\frac{1}{2}\%$  as a percentage, and I think it is my judgment that the cost of organizing the numerous corporations which provided the company and including this one would be in the neighborhood of \$62,000.00.

Q. That is a judgment figure? A. Yes, sir; that is a judgment figure.

Q. Account No. 208, engineering and superintendence during construction, shown in the report in the amount of \$124,943.00, is that a judgment figure too? A. Yes, that represents 3% of the direct costs. The actual amounts shown on the books of the company is \$284,367.00. I do not understand that figure. It seems too high. It may be the way in which it was distributed, the way the charges were made.

*T. E. Seelye—For Repeasant—Cross*

By Mr. Miles:

Q. In other words, you found the books greater? A. Yes, sir.

By the Commissioner:

Q. How much did you say was on the books? A. \$284,000. On account No. 289 we have used an amount equivalent to 2% of the direct costs.

By Mr. Miller:

Q. That again is because you think that is the proper percentage to be applied to arrive at a reasonable figure in your judgment for that account? A. I think that is the amount which the company would be required to spend in order to construct this property under the classification of that account.

Q. It bears no relation to the actual book figures? A. The actual book figures which of course records only expenditures since 1925, January 1st, is \$953.00.

Q. Account No. 209, general officer's and clerk's expenses during construction. That again is a judgment figure? A. Yes, sir.

By Mr. Miles:

Q. All of these estimates are judgment figures? A. Yes, sir.

By Mr. Miller:

Q. Did you apply the same percentages to the original costs, direct costs total, as you did to the reproduction new direct costs total? A. No, sir.

Q. Will you give me the percentages which you did apply in these various accounts in your original cost estimate? A. Organization is the same. Account No. 288, engineering and superintendence, we used  $4\frac{1}{2}\%$  in the reproduction cost, and 3% in the original cost. In accounts No. 289, 290, 291, 292 and 293, we have used the same percentages. Account No. 294, in-



*T. E. Seelye—For Respondent—Cross*

insurance, we have used one quarter of one percent original against  $\frac{1}{2}$  of 1% in the reproduction cost.

Q. Why was that? A. Because building or structure would be put into service in a shorter period of time when built piece meal, and the insurance expense would therefore be less. The same with the amount of taxes during construction, which is in the amount of one half, and also interest during construction, where I have used 3%—

Q. How about taxes during construction? A. We have eliminated from taxes during construction Social Security and Unemployment insurance taxes.

Q. Did you have a percentage figure? A. One half of one percent.

Q. Then did you reduce by a figure obtained by the application of a percentage point the amounts of the Social Security taxes? A. No, sir, the difference between 1% in the reproduction cost and one half of one percent on the other cost.

Q. This account without a number, discount and expense, cost of financing, how did you compute that? A. That is computed on the basis of  $7\frac{1}{2}\%$  of all of the previous accounts. This company was largely financed during a period when a great deal of the company's money was raised for what was certainly considered to be speculative purposes at the time that the properties were started some 50 years ago, at the beginning of the electric industry. The cost of money would necessarily be higher, and that would continue to be the case until probably 20 years ago. As short a time ago as 1921 money was being borrowed by utilities in this state at 8% and the bonds were sold at a discount.

Q. Do you know what the experience of the Edison Light and Power Company has been in regard to financing? A. We have prepared some information on that. I did not think we had planned to submit anything on that, but this company at the present time has notes which are collateral for bonds of the York Railways Company, which are 7% notes. At the same time the York Railways Company sold securities against those in

*T. E. Seelye—For Respondent—Cross*

order to raise money shortly after the war, I think, at a price of nearly \$80.00. Those are 5% bonds. That was for bond financing only. Stock financing would be at a greater discount because of the risk involved. The bond financing is on a first mortgage.

Q. What do those 5% bonds sell at now? A. The bonds sell now for nearly par. They have ranged,—they have been above par but they have come down to a point, I think \$93.00.

By Mr. Miles:

Q. They are due in December? A. Yes, sir.

By Mr. Miller:

Q. With relation to this financing of these stock issues, have you found anything in your examination of the records of the company to indicate what the cost of financing with relation to those stock issues was? A. In the early companies it is difficult to tell whether they got cash to the extent of 100% for their stock sold or not.

Q. This discount and expense, cost of financing, figure is a judgment figure which really is not supported to any material extent by the records of the company? A. I think it is supported by the records of the company but I could not very well quote it to you in a specific way. I think we could prepare a cost of money for this company which would represent the estimate which we have used.

Mr. Miller: That is all we have right now.

Mr. Miles: There is only one thing, I would like to have the privilege in the morning of recalling Mr. Seelye just long enough to have brought into the record a presentation of the comparisons of the overheads in the reproduction and the original cost estimates, because there has been a lot of reference made back and forth, and I think it might put the record in more orderly shape if we did that.

*T. E. Seelye—For Respondent—Cross*

By Mr. Miller:

Q. I have just one more question, do you have a schedule of the property not used and useful in the Public Service, related to the original cost estimate, similar to exhibit 8, which was prepared relative to the reproduction cost? A. No, the original cost estimate does not include the non-used or useful property.

By Mr. Miles:

Q. In other words, the original cost estimate has been related only to the property now used and useful to the Edison Company? A. Yes, sir.

By Mr. Miller:

Q. Referring to exhibit No. 8, the third column of figures, these figures relate to the reproduction cost estimate. Does the total of that third column of \$50,687.00 represent property included in the original cost estimate? A. No, sir.

Q. That has been excluded? A. Yes, sir.

Mr. Miles: That substantially concludes the respondent's case with respect to valuation, other than, so far as I can recall at the moment, one exhibit which we propose to offer through Mr. Reed, touching in more detail this question of the properties of the railways company used by the respondent, and certain general testimony from Mr. Seelye with respect to such matters as going concern value and, with your honor's permission fair value. So, if we could recess at this time without inconveniencing the Commission or the Counsel, I assure you I think I can complete the respondent's case tomorrow.

The Commissioner: If we recess now for the day until tomorrow morning, in your opinion it will facilitate the conduct of this whole case?

Mr. Miles: Yes it will.

The Commissioner: Then we will adjourn until tomorrow morning.

Adjourned until tomorrow morning at 9:30 o'clock.

*T. E. Seelye—For Respondent—Direct*

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Thursday and Friday, March 11, 12, 1937.

Commissioner STAHLNECKER, Presiding.

APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa.,  
for the Public Service Commission;

CLARENCE W. MILES, Esq., 1845 Baltimore Trust Bldg.,  
Baltimore, Maryland,

V. K. KEESEY, Esq., Central National Bank Bldg., York,  
Pennsylvania,  
for Edison Light and Power Company.

T. E. SEELYE, recalled.

*Direct Examination*

By Mr. Miles:

Q. For the purpose of the record will you please read percentages that you apply to the direct property accounts in the determination of organization and general overhead expenses as included in the reproduction cost estimate of the respondent in Exhibit No. 2? A. Yes. The percentages used in the reproduction cost estimates which are set out in Company Exhibit No. 2 for the indirect overheads, the general overheads, were as follows:

For Account 200 organization one and a half percent of the direct costs;

Account 288 engineering and superintendence four and a half percent of the direct costs;

Account 289 general office and clerk's salaries one percent of the direct costs;

*T. E. Seelye—For Respondent—Direct*

Account 290 general office and clerk expenses three quarters of one percent of the direct costs;

Account 291 office supplies and expenses one quarter of one percent of the direct costs;

Account 292 law expenditures during construction one half of one percent of the direct costs;

Account 293 injuries and damages during construction one percent of the direct costs;

Account 294 insurance during construction one half of one percent of the direct costs;

Account 295 taxes during construction one percent of the direct costs;

Account 296 interest during construction six percent of the direct costs and the indirect costs except interest during construction;

Discount and expenses five and a half percent of all of the direct and indirect costs.

Q. Now, will you give the same percentages that you have applied to the direct overheads as shown on Respondent's Exhibit No. 9? A. The percentages which were used for the indirect costs, general overheads in the original cost estimate, Company Exhibit No. 9, were as follows:

Account 200 organization one and a half percent of the direct costs;

Account 288 engineering and superintendence three percent of the direct costs;

Account 289 general office and clerks' salaries one percent of the direct costs;

Account 290 general office and clerks' expenses three quarters of one percent of the direct costs;

Account 291 office supplies and expenses one quarter of one percent of the direct costs;

Account 292 law expenditures during construction one half of one percent of the direct costs;

*Harry A. Reed—For Respondent—Direct*

Account 293 injuries and damages during construction one percent of the direct costs;

Account 294 insurance during construction one quarter of one percent of the direct costs;

Account 295 taxes during construction one half of one percent of the direct costs;

Account 296 interest during construction three percent of the direct costs;

Discount and expenses seven and a half percent of the direct and indirect costs.

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HARRY A. REED, recalled.

*Direct Examination*

By Mr. Miles:

Q. Mr. Reed, I hand you a summary sheet entitled, "Edison Light and Power Company analysis of property owned by York Railways Company and used by Edison Light and Power Company including analysis of joint used facilities as of November 30, 1936," and ask you whether this statement was prepared under your personal supervision? A. It was.

Q. Now, will you state what is intended to be reflected by column "A" of this exhibit? A. Column "A" indicates the ownership of the property or facilities analyzed.

Q. Column "B"? A. Column "B" includes a brief description of the units of property.

Q. Column "C"? A. Column "C" indicates the beneficiary who used this property.

Q. For instance, the person who has the use of the property in question? A. That is correct.

Q. Column "D"? A. Indicates the number of units or quantities being considered.

Q. Column "E"? A. Column "E" is the estimated original cost of the respective units of property.



*Harry A. Reed—For Respondent—Direct*

Q. Column "F"? A. Column "F" is an estimate of the annual rental cost.

Q. Now, take line 1, Mr. Reed, and run across the summary and explain in detail just how this exhibit has been developed and from what source? A. Line 1 refers to a parcel of land near Spring Grove, owned by the York Railways Company, on which the Edison Light and Power Company has a sub-station. In column "E" still referring to line 1 is shown the estimated original cost of the land at \$241.00. Column "F" is the estimated annual rental cost at \$14.00.

Q. Now, let me ask first whether this particular unit of property referred to on line 1 under column "B" is in constant use by the respondent in connection with the rendition of its service? A. It is.

Q. In what way? A. A sub-station, in constant use, is located on this land. The sub-station being owned by the Edison Light and Power Company.

Q. Being owned by the Edison Light and Power Company, that is, the sub-station, but the land being owned by the York Railways Company? A. That is correct.

Q. From what source did you obtain your estimate of the original cost of that site? A. The estimate of original cost is based on the property records which showed the original cost of the entire tract of which this parcel is a small part. We calculated the price per acre and then took the area which is fenced in on which the sub-station is built and calculated or estimated the cost for that acreage.

Q. How did you arrive at your estimate of the annual rental cost for this particular unit? A. I used six percent of the original cost as a basis of determining the annual rental on this parcel of land.

Q. Why did you use six percent? A. My feeling that the owner of the property was at least entitled to the interest on his investment, and I felt that six percent was fair interest for property of this kind.

*Harry A. Reed—For Respondent—Direct*

Q. I notice this is one of the two units, the other appearing opposite line 8, that contains nothing under column "D" entitled, "Number of units or quantity." Why the omission in these instances? A. The reason for that is that no survey has been made to determine the actual area that would be necessary for the company to purchase in case they had to acquire this site. We have used in this calculation what seemed to be a fair area of approximately three quarters of an acre.

Q. It is that portion of the tract of land that is enclosed within the fence, isn't it? A. Plus an approach to the highway.

Q. Now, let us take the next item, opposite line 2. Tell us what is embodied there, and tell us how you arrive at your estimate of annual rental cost? A. Line 2 refers to a stretch of right of way owned by the York Railways Company and being situated between Smysers and Gitts Run sub-station covering a distance of approximately 13.15 miles, and which from the records of the company we have estimated the original cost to be \$42,707. This right of way is jointly used by the Edison Light and Power Company and the York Railways Company. We have estimated that the annual rental cost of six percent on the original cost amounts to \$2,562.

By the Commissioner:

Q. Six percent of the original cost considered as what—what would be a proper charge against Edison Light and Power Company for the use of that land? A. The original cost is the actual cost of the right of way.

Q. I see your six percent is calculated as to what would be at least an approximate proper return to the owner, namely, the York Railways Company for the use of that land? A. This is the estimate of the rental cost that would be incurred in case the Edison Company had to acquire an equivalent amount of right of way for their transmission line.

*Harry A. Reed—For Respondent—Direct*

Q. Despite the fact that both Edison Light and Power Company and York Railways get some benefit from the line? A. That is correct.

By Mr. Miles:

Q. In other words, there is no reason, Mr. Reed, why the Edison Company should get that benefit for nothing? A. No, sir.

Q. What is the character of the use to which the right of way is put by each of these companies? A. This right of way has on it a transmission line which is a benefit to the Edison Light and Power Company; it also has on it a transmission line belonging to the Metropolitan Edison Company which supplies power to the Gladtfeiler Mills from which it has a return.

Q. The mills to which you have just referred are a customer of the Edison Company? A. That is correct.

By the Commissioner:

Q. What benefit does York Railways Company get out of this right of way? A. York Railways Company has their tracks and their overhead lines on the right of way, and permits them to maintain service there.

Q. Then it does get a substantial benefit from the use of this right of way, the York Railways? A. It does get benefit from the use of the right of way.

Q. A great deal of benefit if it has its tracks on it? A. Yes.

Mr. Miles: Not only that, it owns it.

The Commissioner: I quite understand that.

By the Commissioner:

Q. But your calculation is based on an estimated charge which would be proper against Edison Light and Power of six percent of the full value or the original cost of that right of way? A. Yes, sir.

*Harry A. Reed—For Respondent—Direct*

Q. Despite the fact that it only gets part of the benefit from the use of it? A. Edison Company gets benefit from the—

Q. I quite understand that, but there is a value to the York Railways, a substantial value in this right of way? A. The is, but we have not indicated on this chart the value—

Q. You are talking about original cost of the right of way as I understand it? A. That is correct.

By Mr. Miles:

Q. Mr. Reed: if the York Railways Company as a result of foreclosure of its mortgage, or for any other reason was required to have the Edison Company move its lines from the right of way have you given any thought to how such line could be run by the Edison Company and what would be the character of the expenditure involved? A. I have not made detailed comparative analysis of that, but in general it would be necessary for the Edison Company to locate a transmission line in some other section, on some other site than the one they now occupy, and to that end they would have to acquire right of way rights, actually purchasing land, and they would be put to the expense of new installation of poles, towers, fixtures, wire and so forth, with, of course, some salvage probably from the existing line.

Q. Of course, another possibility would be to purchase this line in question? A. That is correct.

By the Commissioner:

Q. You can conceive of a possibility then under foreclosure proceeding where Edison Light and Power would be required to move its transmission lines off of this land? A. Very decidedly so. They have no rights there except by verbal agreement at the present time.

Mr. Miles: I think it would be more than a possibility. I think it would be highly probable under the terms of the indenture.

*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q. Now, will you refer to line 3, Mr. Reed, and tell us what is embodied in that unit and the basis of your calculation? A. Line 3 relates to a stretch of right of way located between Violet Hill sub-station and Dallastown, owned by the York Railways, from which both Edison Light and Power Company and the York Railways Company receive benefits. It covers substantially 4.42 miles, and is shown here at an estimated original cost of \$29,233, and an estimated annual rental cost of \$1,754.

Q. Mr. Reed, do you know whether or not York Railways Company actually owns that particular piece of land which you have described as a right of way, in fee? A. Yes, sir. According to the records of the company that is right of way owned in fee.

Q. And is that same true of item No. 2? A. Yes, sir.

By the Commissioner:

Q. Apparently that is a much more expensive right of way than the other one? A. Yes, sir, it is.

By Mr. Miles:

Q. Now, will you refer to the property described on line 4? A. Line 4 relates to a transmission line between Smyser's and Gitt's Run sub-station owned by the York Railways Company from which both Edison Light and Power Company and the York Railways Company are benefited. The estimated original cost of this construction is \$19,248, and the estimate of the annual rental cost is \$1925. The transmission lines covered by this analysis are actually owned and were originally built by the York Railways Company but devoted to the sole use of the Edison Light and Power Company in rendering electric service in this area.

*Harry A. Reed—For Respondent—Direct*

By the Commissioner:

Q. Electrical service to whom other than the York Railways Company? A. I think in part to York Railways Company and in part to the public. I am informed by Mr. Mitchell, who made a very careful study of that, that all along that line customers of the Edison Company are fed, so that it is really joint electrical service, or the combined electrical service of both Railways and the public.

Q. So that that line is used to serve both ordinary customers, so to speak, of the Edison Light and Power Company, plus service to the York Railways? A. Yes, sir.

Q. In connection with that item of \$1925, how do you arrive at that item, Mr. Reed? A. By taking ten per cent of the estimated original cost.

Q. Why did you take ten per cent? A. Well, I figure that the owner was entitled again to the interest on its investment, plus the depreciation and operating costs that he has in connection with it.

By Mr. Miles:

Q. Now, let us take the item in line 5, Mr. Reed? A. Line 5 refers to poles on the right of way between Violet Hill sub-station and Dallastown owned by the York Railways on which the Edison Company's transmission lines are located. There are 410 poles in this area, and the analysis of original cost made by Day & Zimmerman permits me to estimate the original cost of these poles at \$12,331, from which I have determined an estimated annual rental cost of \$1233.

Q. Now, the right of way between Smyser's and Gitt's Run sub-station— A. That is covered on line No. 6.

The Commissioner: You mean poles?

Mr. Miles: I mean poles.



*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q. The right of way between Smyser's and Gitt's Run sub-station? A. That is correct. Line 6 of this analysis refers to 464 poles on the right of way between Smyser's and Gitt's Run sub-station owned by the York Railways Company on which the lines used by the Edison Light and Power Company are located. The estimated original cost is \$13,955 and the estimated annual rental costs \$1396.

Q. Now, will you take up the item embraced in line 7? A. Line 7 refers to trolley poles in York and various boroughs owned by the York Railways Company on which the Edison Light and Power Company has suspended its transmission and distribution lines there being 1009 of those poles, with an estimated original cost of \$26,466, and an estimated annual rental cost of \$2,647.

Q. Let us proceed with line 8? A. Line 8 relates to the rotary converter.

By the Commissioner:

Q. You say that on these 1009 poles owned by York Railways, Edison Light and Power Company had strung lines?

A. Had strung their transmission and distribution lines.

Q. The estimate of original cost is the estimate of the total original cost of these 1009 trolley poles? A. Yes, sir.

Q. And are these trolley poles also used in the service of the Trolley Company? A. They are used in the service of the Trolley Company, yes.

Q. They are poles which are necessary for the operation of the trolley cars? A. Yes, sir. Line 8 relates to a rotary converter in the Central Power Station owned by the York Railways Company, used by the Edison Light and Power Company in rendering electric service to the Railways. The estimated original cost is \$23,961, and the estimate of annual operating cost is \$2,396.

*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q. All right, take the next line. A. Line 9 refers to the space used by the Edison Light and Power Company for storage purposes in the Maryland Avenue car barn, owned by the York Railways Company. The Edison Light and Power Company uses 2,128 square feet of this area—I should say that is exclusively used by the Edison Light and Power Company,—and I have estimated that space at fifty cents per square foot, that appearing as being a reasonable estimate for this class of storage space, amounting to \$1,064.

Line 10 refers to the North George Street freight station in the city of York, owned by the York Railways Company, where the Edison Light and Power Company use 3,159 square feet of floor space for storage purposes. That has been estimated on the same basis, fifty cents per square foot, in the amount of \$1,580.

Line 11 refers to the Pennsylvania Avenue car barn owned by the York Railways Company, where Edison Light and Power Company uses 1,905 square feet of floor space for storage purposes at an estimated rental cost of \$950.

Line 12 relates to the Red Lion freight station and waiting room building in the borough of Red Lion owned by the York Railways Company, where Edison Light and Power Company uses 2,545 square feet of floor space for storage and repair purposes at an estimated annual rental cost of \$1,273.

Q. And what did you find to be the estimated original cost for eight of the twelve units in column "E"? A. The estimated original cost for the first eight items included in column "E" is \$168,142.

Q. And your estimate of the annual rental for all twelve items of property is what? A. \$18,794.





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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1938**

**No. 509**

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**DENIS J. DRISCOLI, THOMAS C. BUCHANAN AND  
RICHARD J. BEAMISH, ET AL., APPELLANTS,**

**vs.**

**EDISON LIGHT AND POWER COMPANY**

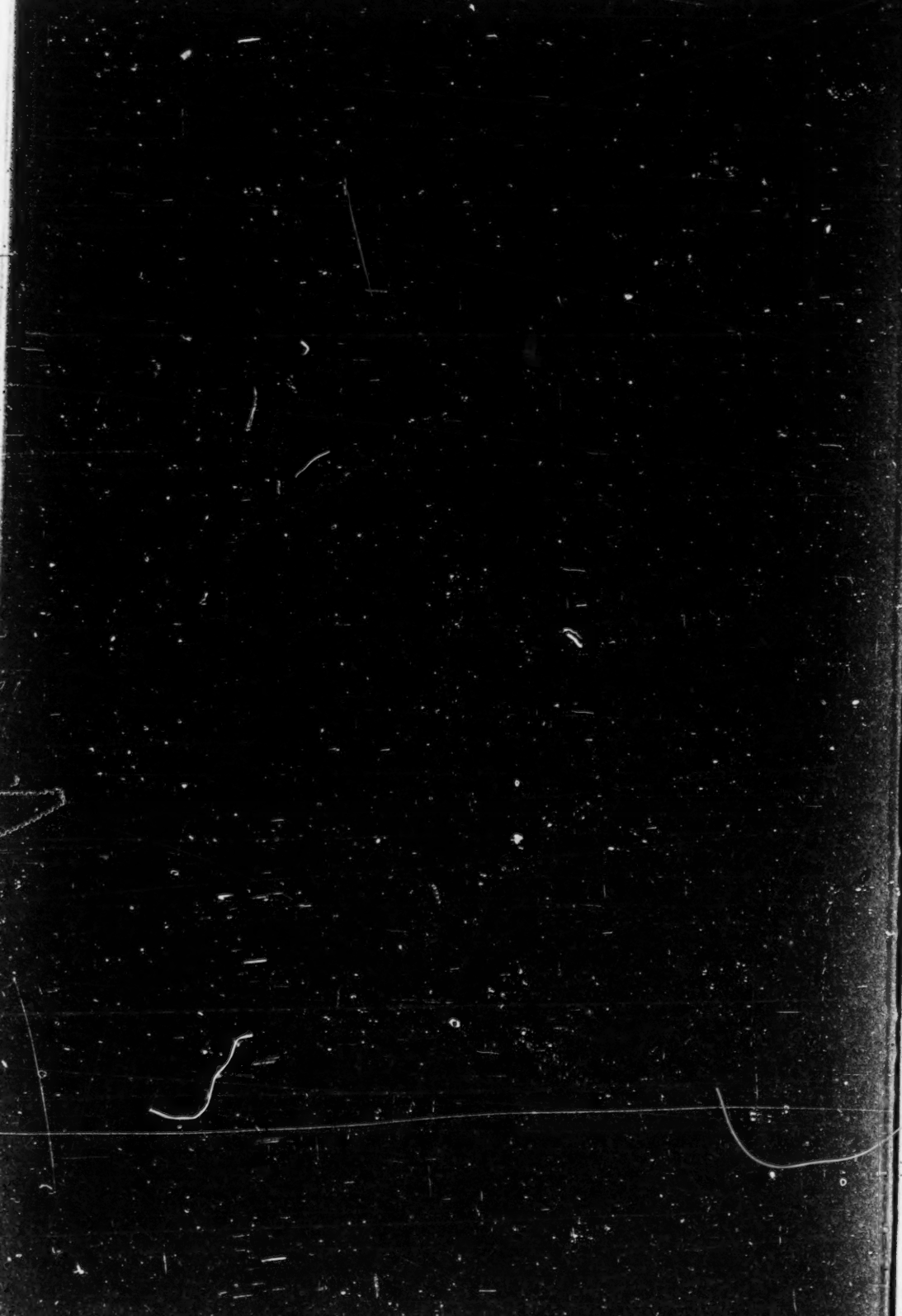
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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

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**FILED DECEMBER 6, 1938.**





# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 509

DENIS J. DRISCOLL, THOMAS C. BUCHANAN AND  
RICHARD J. BEAMISH, ET AL., APPELLANTS,

vs.

EDISON LIGHT AND POWER COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
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*Harry A. Reed—For Respondent—Cross**Cross Examination*

By Mr. Miller:

Q. Mr. Reed, take line 1. What is the total area of the right of way described in column "B", line 1? A. The total area is approximately three-quarters of an acre.

Q. Now, what I mean, the right of way of the York Railways Company, from which you derive your estimated original cost, I assume that you took the total original cost of the entire tract, did you not, of the entire right of way? A. Not of the entire right of way, sir. We referred to the Company's right of way maps which showed the cost of purchasing the right of way property from individual owners. The total area of the tract of which this is a part. I don't recall exactly, nor the original cost of that, that is a matter of company record and can be obtained, but the amount that we have used here is the mathematical result of dividing the total acres purchased in that entire tract into the total dollars and then taking three-quarters of that cost per acre in arriving at this figure.

Q. You say you can get the figures that you used in computing these \$241. Can you give us those at the next hearing? A. Yes.

Q. And will you please? A. Surely. Be glad to. All these figures we have in Philadelphia and it will be very easy to obtain them for you.

Q. Now, is this right of way mentioned in line 1, the portion that you covered in this exhibit, used in part by York Railways Company? A. This right of way is not used, nor is it necessary to be used, by the York Railways Company.

Q. What is it used for? A. At the present time it is used as a site for the Edison Light and Power Company's Spring Grove sub-station.

Q. Now, do the facilities of the York Railways Company pass over this three-quarters of an acre? A. No, sir, they pass

*Harry A. Reed—For Respondent—Cross*

to one side of it. In other words, one of the four boundaries of this tract is the line of the York Railways Company.

Q. The three-quarters of an acre is entirely fenced in, is it?  
A. With the exception of what I had estimated for an approach from the highway, I think it is all fenced. I might be able to clear this up giving you this explanation: In acquiring the right of way for railway purposes at this location, the location of the track itself left a triangular stretch in the original property, which was not of very much use to the original owner, and so they acquired that entire area, which is very customary in acquiring a right of way property, and that portion lying on side of the actual railway line, which is included in that triangle, is where the sub-station is now built. It is not exactly necessary for the York Railways Company to use that, and they don't use it.

Q. And they never did? A. Except at the time of construction they may have used it for construction purposes.

Q. I mean they acquired it simply because it was part of the property that the owner might as well get rid of, and they might as well have, is that right?

Mr. Miles: I want to answer that question.

The Commissioner: I don't think we should assume that they are doing any too bad, so to speak.

By Mr. Miller:

Q. At any rate, York Railways Company never constructed any of their facilities on this particular portion of the right of way which they acquired? A. As to that I can't answer. They are not on there now.

The Commissioner: It is a very insignificant item anyhow.

By Mr. Miller:

Q. Take line 2, is 13.15 miles the entire length of the right of way? A. I didn't get that clearly.

*Harry A. Reed—For Respondent—Cross*

Q. What I want to get clearly is what makes up the figure of \$42,707, the total cost of the right of way mentioned on line 2?

The Commissioner: The total cost of 13.15 miles of right of way, is that what you mean?

Mr. Miller: Well, I want to know is—

The Commissioner: Is the total cost of 13.15 miles of right of way.

By Mr. Miller:

Q. What does 13.15 miles represent. Does it represent the right of way purchased? A. It represents a number of tracts of right of way which were purchased by the York Railways Company in the area, or in the section and located between Smyser's and Gitt's Run sub-station.

Q. What does \$42,707 represent? A. That represents the original cost of the right of way between Smyser's and Gitt's Run sub-station covering a distance of 13.15 miles.

Q. Is it the total of the amounts paid for various parcels making up 13.15 miles? A. It is the total expenditure by the York Railways in acquiring a stretch of right of way 13.15 miles in length.

By the Commissioner:

Q. Which was made up of a number of parcels bought at various times but in whole making a right of way of 13.15 miles in length? A. That is correct. I think there are fifty or sixty parcels in that purchase.

Q. And the total cost of those fifty or sixty parcels put together makes a right of way of 13.15 miles in length at \$42,707? A. That is correct.

Q. From the records of the company? A. Yes, sir.

By Mr. Miller:

Q. Now, does York Railways Company use a portion of that right of way? A. Yes, sir.

*Harry A. Reed—For Respondent—Cross*

Q. For what purpose? A. They have their tracks on it.

Q. Is there anything else? A. Part of the right of way is also used by the transmission lines of the Metropolitan Edison Company.

Q. Does York Railways Company have any power lines or other facilities? A. Yes, they have their pole lines, their overhead transmission lines for rendering electric trolley service.

Q. What portion of the use would you say, expressed in percentage, was made of this right of way by York Railways Company? A. That is a very involved thing to analyze, Mr. Miller. I have not made any attempt to do it.

(Last question read.)

Mr. Miles: What portion of whose use?

Mr. Miller: The total area of the right of way.

Mr. Miles: By the three parties that use it, representing the use by the Edison Company.

Mr. Miller: I asked about York Railways, but Edison Company, if you know that, Mr. Reed, give me that.

The Witness: I don't know of any way of answering that question.

The Commissioner: It seems to me that is an impossibility.

Mr. Miles: I don't see how it is possible to answer it.

By Mr. Miller:

Q. So that by reason of the difficulty of arriving at an allocation of that, sir, you figure that the entire original cost should be placed under the head of the Edison Company—should be paid for, or rather that the original cost should be paid by the Edison Light and Power Company?

The Commissioner: Before we get into that, this is what I am interested in: I would like to have Mr. Miles, if he can do so, show what use is intended to be made of, or what is the purpose of this exhibit in relation to the

*Harry A. Reed—For Respondent—Cross*

\$168,000 of original cost, and particularly as to the \$18,000 of annual cost. Perhaps we can save some cross-examination.

Mr. Miles: If your Honor please, at one of the early stages in this case we expressed as vigorously as we could our belief that there were many benefits accruing directly to the Edison Company as a result of its affiliation with the York Railways Company and these other facilities.

Now, these benefits divide themselves into two classes. One is a direct savings in expenses by the Edison Company—I should say three classes. The second is the profits on the sale of energy and steam. The third is the use of property, or the savings on what would be the necessary capital expenditures to replace the property owned by this affiliate which it now uses.

We have further felt in connection with this case, and with great deference to Your Honor, still feel that the only sound approach or solution of it was an allowance of a rate of return to the Edison Company that would allow compensation for these jointly used facilities and for the saving of money which unquestionably results to the Edison Company as a result of its tie-in with the other affiliates.

Now, Your Honor, by his ruling, indicated, at least speaking for yourself, that you didn't go along with that concept of this case. Now, therefore, we submit—

The Commissioner: I now state for the Commission in connection with that—

Mr. Miles: No formal opinion has been written. I didn't say that the Commission had decided the case—

The Commissioner: And I didn't say that the Commission had decided the case, but the Commission did confirm my ruling, and you were so advised.

*Harry A. Reed—For Respondent—Cross*

Mr. Miles: On that phase of the case now that having been rejected it seems perfectly apparent that the Commission is in effect saying we are going to view this case as relating only to the Edison Company without any reference to its affiliates. We say to Your Honor, with the greatest deference, that is unlawful, but nevertheless the Commission has so held. Now, we say that we feel that there is not any rule of law or reason or conscience which should deny to the Edison Company some compensation for these factors that enter into this case, if not through a rate of return then certainly through an allowance in their operating expenses for rental costs as it relates to property, for increased operating expenses as it relates to joint use of offices, and joint use of employees and administrative officials, and if that theory is rejected then the only other thing that we can conceive of whereby we could get any benefit from this is an inclusion in the rate base of \$168,000, or whatever the figure might be, representing the investment. Personally, we see many difficulties in the face of the third of these three alternatives, but Your Honor has elected by his ruling to say that in the rate of return we are not going to consider it. Therefore, we say we must get it either in operating expenses or in the rate base.

The Commissioner: Remembering what I said, I think I did state several times on the record that as far as I was concerned I was perfectly ready and entirely willing that evidence should be received, should be put into this record, on the value of any facilities owned by the York Railways which were used by Edison Light and Power Company for the purpose of transmitting its energy to customers other than the York Railways Company. I think I did mention that.

Mr. Miles: That is perfectly correct, and this is part of it.



*Harry A. Reed—For Respondent—Cross*

The Commissioner: I don't know whether your witness can answer this question or whether you can. If you would rather make a statement all right.

By the Commissioner:

Q. Mr. Reed, on your rights of way No. 2 and No. 3 I believe the annual rental cost is based on six per cent, is it not?

A. Yes, sir.

Q. The others are based on ten per cent? A. Up to and including eight.

Q. Four, five, six, seven and eight are ten per cent? A. Yes.

Q. And, of course, the others are based on the area, per square foot. Now, you have two setups here. Now, if you heard Mr. Miles' statement of his theory of rate of return, if the testimony was limited to the value of the property owned by Edison Light and Power, Mr. Miles' position is that in view of the relation between the companies, the Edison Light and Power Company should be allowed to earn at least seven and a half per cent to take care of all the expenses surrounding all these companies; you heard his position there? A. Yes, sir.

Q. Now, if you take six per cent rental on this figure included in the estimate of value of Edison Light and Power Company, \$168,142, then on all of that the Company would be allowed a return of seven and a half per cent?

Mr. Miles: No, that is not my theory in any sense.

The Commissioner: What is? What are you going to include for the benefit of the Edison Light and Power Company out of this tabulation?

Mr. Miles: If we are allowed under our theory seven and a half per cent return on the property owned solely by Edison and devoted exclusively to its use we have no interest in any claims for compensation for this because

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we think we are being compensated in that manner, but if your Honor saw fit, as you have done, to reject that theory, then we say certainly there must be something added to our operating expenses to take care of what would happen to a company similar to Edison divorced completely from its affiliates, and we think that there should be added to our operating expenses some reasonable rental for those facilities, plus some other accounting expenses which we will refer to when Mr. Katz is on the stand. The third alternative that we can see would be the including of \$168,000 in the rate base of the Edison Company, and the allowance to it of whatever rate of return the Commission ultimately determines. I further observe that we see many difficulties in the way of the last, or the third of these alternatives, because of the question of ownership.

The Commissioner: Then, as I understand it, in this setup here, leaving aside the rentals and storage space in the last four items, there is actually in most of these cases—or leaving aside No. 1 and No. 8, there is joint use of facilities and rights of way by both York Railways and Edison Light and Power, both of them get some benefit out of these particular facilities, do they not, for example, the trolley poles, they both use them?

The Witness: That is correct.

Mr. Miller: Now, Mr. Miles, is the intent or purpose of the exhibit to arrive at figures which would show proper allowance in operating expenses, or tend to show the proper allowance in operating expenses of Edison Light and Power Company for these facilities of York Railways Company which are used by Edison Light and Power?

The Witness: That is right.

Mr. Miles: Yes, that is right.

*Harry A. Reed—For Respondent—Cross*

By Mr. Miller:

Q. Mr. Reed, taking item No. 3, is that right of way used by anyone other than Edison Light and Power Company and York Railways Company in its entirety? A. I think not.

Q. What is the use made of that right of way by York Railways Company? A. It has its tracks and overhead pole lines located on the right of way.

By the Commissioner:

Q. Mr. Reed, let me just ask you one other question in connection with No. 2 and 3 rights of way. If the York Railways owned these two rights of way, as it does now, and had no facilities whatsoever, had just bought the right of way and never done anything about it, put any facilities on that, used for its own purposes, but on it were facilities of Edison Light and Power Company as are on it now, as I understand it, that calculation would be just the same as this, would it not? A. I think so, yes.

Mr. Miles: Were you through with Mr. Reed, Mr. Miller?

Mr. Miller: I want to ask him some questions as to these various items.

By Mr. Miller:

Q. Is 4.42 miles the total length of that right of way, Mr. Reed? A. The right of way under discussion, yes.

Q. Then \$29,233 is the total cost of that whole right of way? A. Yes, sir.

Q. I assume that you would be equally unable to break down that figure into proportions between Edison Light and Power Company and York Railways Company as to proportionate use as you were in the case of the item on line No. 2? A. That is correct.

Q. So that if Edison Light and Power Company were allowed the amount showed in column "F", namely, \$1,754 per year in operating expenses, it would be allowed a figure based

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upon the total cost, the total original cost of a right of way used jointly with York Railways Company? A. Yes, sir.

Q. Item No. 4, transmission line. That transmission line is used by Edison Light and Power Company and York Railways Company and by no one else? A. That transmission line is owned by the York Railways Company and used by the Edison Company.

Q. Is it used by Metropolitan Edison? A. No, sir.

Q. Now, I believe you stated in arriving—I assume that \$19,248 is the total cost of the transmission line, is that right? A. No, sir; that is the cost of the wires and cross arms only that were originally installed by the York Railways Company, and they are still owned by them, and located on this stretch of 13.15 miles.

Q. Have you ever made any attempt to allocate the cost of those facilities as between the joint users, namely, Edison Light and Power Company, York Railways Company? A. They are not jointly used by York Railways Company. The wires and the cross arms, Edison has exclusive use of them.

Q. I see you have in column "C", "beneficiary" Edison Light and Power Company and York Railways Company? A. The reason for that is that the poles on which these wires are supported are partly owned by Edison and partly owned by York Railways.

By the Commissioner:.

Q. What is the benefit to York Railways? A. The benefit to York Railways comes through the use of the poles by Edison Company on that right of way by York Railways Company.

Q. For what purpose? A. For the purpose of supporting their trolley wires.

Q. The trolley line does run on this right of way then? A. Oh, yes. The trolley line is on the right of way, but not on these particular poles.

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By Mr. Miller:

Q. It is not on the cross arms then mentioned in line 4? A. No, sir.

Q. Now, you stated in arriving at your figure of \$1925 in column "F" you took into consideration depreciation. At what rate did you figure depreciation? A. I have not taken into consideration there the actual depreciation found in that line. I simply estimated that for maintenance and depreciation purposes an additional allowance of four per cent over the six, as reasonable for determining this rental basis.

Q. Now, on what do you base that four per cent allowance? A. That is an estimate based on judgment only. It is not the result of a deep analysis of what actually applies to any particular phase of that line, it is an overall figure.

Q. In line 5 are those poles used jointly by Edison Light and Power Company and York Railways? A. Yes, sir.

Q. I take it that 410 is the total number of poles in that line? A. No, sir.

Q. It is not? A. This is only part of the poles remaining on that line belonging to the York Railways Company. There are other poles on that line that by result of their replacement by Edison Light and Power Company from time to time as old poles of York Railways Company have worn out. There is a working agreement between the two companies whereby Edison on account of its use of facilities there is obligated to replace worn out poles, and as they do they are badged with the Edison Light and Power Company's tag, and have been included by us in our estimate of reproduction cost and of original cost as well so that eventually as the old poles on that line wear out Edison Light and Power Company will in time become sole owner of all the poles referred to.

Q. Does that figure of \$12,331 represent the total cost of all the poles on the line? A. Of the 410 poles that remain in the ownership of the York Railways Company only.

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Q. How did you arrive at that figure of \$12,331 as the original cost of 410 poles? A. By finding the unit cost in our original cost estimate of poles of the kind that are included on that right of way and multiplying that by the total number of poles, thereby arriving at \$12,331.

Q. When you say total number of poles, do you mean total number of poles on the line? A. Total number of poles on this exhibit.

Q. 410? A. 410, that is correct.

By the Commissioner:

Q. Well, this total number of poles, is that the total number of poles between Violet Hill sub-station and Dallastown, for example? A. No, sir, that is the total number of poles between Violet Hill and Dallastown owned by York Railways.

Q. There are other poles owned by Edison Light? A. That is correct.

Q. On the same right of way? A. That don't appear in this analysis.

By Mr. Miles:

Q. In the same line, you mean? A. Yes, sir.

By Mr. Miller:

Q. Do you know the total number of poles, regardless of ownership, between Violet Hill sub-station and Dallastown on this right of way? A. I don't know that off-hand.

Q. Can you give us that? A. I think we can. We can get it for you.

Q. And you will? A. Yes.

The Commissioner: Do you have the figures here; you can make that up and supply it?

Mr. Mitchell: Yes.



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By Mr. Miller:

Q. This figure of \$1,233, does that include an allowance for depreciation? A. Yes, sir.

Q. In what amount, or in what percentage? A. The depreciation and maintenance there I would figure at four per cent as in the preceding case.

Q. But maintenance of poles in that line owned by York Railways Company? A. Minor maintenance is taken care of by the York Railways Company. As the poles become worn out and require replacement, that is the obligation of the Edison Light and Power Company.

Q. What portion of your depreciation, your four per cent, is for minor maintenance and what portion for depreciation? A. I don't know. I have not thought about it from that angle.

Q. As I understand it, when the 410 poles are replaced they will be replaced by Edison Light and Power Company? A. Yes, sir.

Q. At its sole expense? A. Yes, sir.

By the Commissioner:

Q. Then I don't see in this calculation why there ought to be anything for depreciation, if that is the case. A. When they are ultimately replaced, the cost of that will be borne by the Edison Company. At the present time—

Q. But that is going on all the time in greater or less degree, isn't it? A. Yes, sir.

Q. All right; now, then, as to maintenance, I can see how proper calculation can be made on this exhibit, and for the purpose of this exhibit only I am talking about, I don't see why any figure for depreciation should be allowed there at all.

Mr. Miles: Except why, your Honor, should the Railways Company be expected to get this—

Mr. Miller: It is getting the poles back.

*Harry A. Reed—For Respondent—Cross*

Mr. Miles: No, it is not getting them back. That is just the point you overlooked. Edison is owning them.

The Commissioner: If this is annual rental for the line that is going on both for the future and if this present situation is maintained, and Edison Light goes ahead and replaces the poles that are worn out, and still goes ahead and gets this rental, then I don't see why depreciation should come in here.

Mr. Miles: Obviously, if it succeeded in replacing a line as its own property this would not enter at all, and that would be a matter that the Commission has jurisdiction over at all times.

The Commissioner: If it went on?

Mr. Miles: The only theory of this is that it is a rental that the Railways Company receives, and as these poles are replaced, which is an obligation of the Edison Company, eventually Edison would have the poles in question.

The Commissioner: Then after Edison had replaced all the poles, then the York Railways Company would not be entitled to any rental?

Mr. Miles: That is right, sir.

The Commissioner: But on the theory that the Edison Light Company would get the benefit of the allowance made by the Commission permanently for the future.

Mr. Miles: I don't follow you.

The Commissioner: It seems so to me.

Mr. Miles: Your Honor understands that as these poles are replaced, they are replaced by Edison Company at Edison's expense?

The Commissioner: I understand.

Mr. Miles: And would become a part of its plant and property account, and, as that condition grew, then there would be no necessity for any other rental arrangement, but certainly it could hardly be argued that the Railways

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Company should give this property away over a period of years and get no compensation or benefit as a result of the retirement of these poles and the replacement by the Edison Company.

The Commissioner declared a recess of five minutes.

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AFTER RECESS

Q. HARRY A. REED, recalled.

*Cross Examination*

By Mr. Miller:

Q. Mr. Reed, where were these poles replaced charged on the account of Edison Light and Power Company. I am referring now to the poles that you said were replaced by Edison Light and Power Company in connection with the poles mentioned in line No. 5? A. They are additions to fixed capital of the Edison Company.

Q. Were they added to fixed capital, or were they added to maintenance on the books, do you know? A. I am not sure.

Q. Can you find out for us?

The Commissioner: I think the gentleman who testified as to the pole lines who would probably be Mr. Mitchell, would probably be a better witness on that.

Mr. Miller: All right, it doesn't matter who gives us the information.

Mr. Mitchell: The poles that the Edison Company is replacing are capitalized in Edison property and the Railways Company poles are retired from the Railways Company capital. There is no replacement charged to maintenance.

Mr. Miller: That is the way this was recorded on the books?

*Harry A. Reed—For Respondent—Cross*

Mr. Mitchell: Yes, sir.

By Mr. Miller:

Q. I don't know whether I asked you the percentage of depreciation allowance that you applied to these 410 poles. Can you give me that? A. You asked me, and I told you I didn't make specific allowance for depreciation on it.

Q. Does the four per cent figure apply in line 5 as in line 4, is that right, for depreciation and maintenance? A. Yes, sir.

Q. Take line 6. Are the poles mentioned in column "B", of line 6, jointly used by York Railways Company and Edison Light and Power Company? A. Yes, sir.

Q. Are they used by anyone else? A. No, sir.

Q. Is the figure of 464 representative of the total number of poles on the right of way between Smyser's and Gitt's Run sub-station? A. No, sir.

Q. Is that 464 figure comparable with the figure of 410 in the line above? In other words, the poles which are still owned by York Railways Company on that line but which will be replaced by Edison Light and Power Company when they go out of service.

The Commissioner: In the same manner as on the line between Violet Hill and Dallastown.

The Witness: Generally they are in the same category. They are not all located on private right of way.

By the Commissioner:

Q. It is the same general category? A. That is right.

Mr. Miles: The method of retirement is the same.

By Mr. Miller:

Q. I assume you use a four per cent figure for depreciation and maintenance to obtain the figure of \$1,396 in column "F"? A. Yes, sir.

*Harry A. Reed—For Respondant—Cross*

Q. Now, take line 7. Are the poles mentioned in column "B" on line 7 jointly used by York Railways Company and Edison Light and Power Company? A. Yes, they both use them.

Q. And will those poles to the number of 1009 be replaced by Edison Light and Power Company when they are retired? A. Not if the Railways Company is still in operation. They are owned and maintained exclusively by the Railways Company at the present time.

Q. Well then why do you include a four per cent figure as apparently you have in the rental cost to Edison Light and Power Company for those poles? A. The Edison Company lines are located on those poles, and they receive beneficial use from them.

Q. Yes, but your figure of \$2647 was arrived at by taking the six per cent annual rental and adding to it a four per cent figure for depreciation and maintenance, was it not? A. Yes, sir.

Q. Why did you add depreciation and maintenance in the amount of four per cent if the trolley poles are maintained by York Railways Company and will be replaced by them? A. Well, I feel the York Railways Company ought to be compensated for supplying facilities to Edison Light and Power Company.

Q. Even though it uses the poles itself? A. It is part user of those poles, yes.

Q. And you calculate depreciation and allowance as the same where the poles are to be replaced by the Edison Light and Power Company and in this case where the poles are to be replaced by York Railways Company? A. Well, there is no difference. At the present moment the situation is identical.

Q. Now, take the item on line 8, the rotary converter in the central power station, is \$23,961 the total cost of that rotary converter? A. Yes, sir.

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*Harry A. Reed—For Respondent—Cross*

Q. And is that used jointly by York Railways Company and Edison Company? A. No, sir.

Q. For what is that rotary converter used? A. For the purpose of converting AC current to direct current to sell to the Railways?

Q. Solely to the Railways? A. No, sir.

Q. To whom is direct current furnished other than the York Railways Company? A. It was previously testified in this case that there are two customers in the city of York who receive direct current service from the Edison Company.

By the Commissioner:

Q. Is not the bulk of the direct current which is made available by this rotary converter supplied to York Railways Company? A. The bulk of it, yes.

Q. Then there is a very substantial benefit to the York Railways Company from this rotary converter, isn't there? A. The York Railways Company benefits through receiving direct current.

Q. Does York Railways Company pay for that direct current what other customers pay for the direct current served to them by this rotary converter, the same rate? A. No, sir.

Q. It is a lower rate? A. On account of volume of use.

Q. But on the same tariff? A. I think not.

Mr. Miles: It is on a railway tariff.

By Mr. Miller:

Q. Mr. Reed, then there are direct current consumers of Edison Light and Power Company deriving a benefit from this rotary converter also, is that right? A. To a minor extent, yes, sir.

Q. Returning to line 7 for one question, Mr. Reed, does \$26,466 figure represent the total cost of the 1009 poles? A. Yes, sir.

*Harry A. Reed—For Respondent—Cross*

Q. Now, could you tell me what depreciation has accrued on the original cost figures in column "E" lines 1 to 8? A. I made no study of depreciation on original cost.

Q. Why didn't you take the depreciated original cost for the purpose of this exhibit? A. I have no depreciated original cost.

The Commissioner: You (mean depreciated original cost.

Mr. Miller: Yes.

The Commissioner: What is the depreciated reproduction cost?

The Witness: That could be computed. I don't have that information for those specific items.

Mr. Miles: We have it available and will be glad to furnish it.

Mr. Miller: We would like to have it.

By Mr. Miller:

Q. Are there any present agreements as to reimbursement for use of this property, Mr. Reed? A. May I have the question read.

(Last question read.)

By Mr. Miller:

Q. I might put that this way: Are there any agreements as to payment of compensation by Edison Light and Power Company to York Railways Company for the use of these various items? A. Not that I know of, with the exception of the Edison Light and Power Company agreement with the York Railways Company relative to the replacement of certain poles.

Q. Only in connection with the pole lines? A. That is all that I know of.

Q. Are those agreements in writing or are they oral? A. They are oral.

*Harry A. Reed—For Respondent—Cross*

By the Commissioner:

Q. Mr. Reed, if these trolley poles in York and the boroughs, 1009 trolley poles, were owned instead of by York Railways Company by the Edison Light and Power Company the original cost, of course, would still be \$26,446 regardless of ownership?

A. Yes, sir.

Q. What would be a proper charge on the books, an annual charge, on the books of the Edison Light and Power Company in connection with those 1009 poles?

Mr. Miles: For what, your Honor? You mean for depreciation?

The Commissioner: For everything.

The Witness: For maintenance, depreciation upkeep and everything?

The Commissioner: Everything.

The Witness: I would not like to give an answer off-hand on that. I have not made any particular study from the standpoint of long accruals for depreciation, although it would be substantially higher than I have allowed.

By the Commissioner:

Q. Well, but if it was substantially higher than \$2647, even if that were so then Edison Light and Power Company would be entitled to a return, some annual return from York Railways Company for the use of those poles by York Railways Company, wouldn't it? A. Yes, it would.

Q. Would it be entitled to \$8,647? A. I think it would.

By Mr. Miller:

Q. Now, taking item No. 9, can you tell me what annual charge per square foot is represented by the figure \$1064? A. As I previously testified fifty cents per square foot was the estimate.

*Harry A. Reed—For Respondent—Cross.*

By the Commissioner:

Q. And that applies to all four of the last items? A. That is correct.

By Mr. Miller

Q. Now, what is the total area of the Maryland Avenue carbarn in line 9? A. The total area?

Q. Yes, in square feet. A. The total gross floor area is 3,535 feet.

Q. Do you know the total original cost?

The Commissioner: The original cost of this carbarn?

Mr. Miller: Yes, the Maryland Avenue carbarn.

Mr. Miles: We were not allowed to prove that. You objected.

Mr. Miller: For the purpose of this exhibit I am asking him.

The Witness: I beg your pardon, are you referring to the Red Lion?

By Mr. Miller:

Q. No, the Maryland Avenue carbarn in line 9? A. Strike out my original figure. I was quoting on the Red Lion. May I again have the question, please?

Q. Can you give me the total original cost of the Maryland Avenue carbarn and the total number of square feet in the Maryland Avenue carbarn? A. The total floor area in the Maryland Avenue carbarn is 21,415 square feet. According to our study of the original cost of the Maryland Avenue carbarn the estimated direct cost is \$22,156.

Q. Is that the original cost or the reproduction cost? A. The original cost.

By Mr. Miles:

Q. And you said direct cost only? A. Yes, sir.

*Harry A. Reed—For Respondent—Cross*

By Mr. Miller:

Q. Now, where is this part that is used by Edison Light and Power Company for stores located, is that on the main floor, so to speak, of the carbarn? A. There is only a single floor.

The Commissioner: Is there more than one floor to a carbarn?

By Mr. Miller:

Q. Using the basis for determining the proper rental—the basis used by you for determining your figure for rental with reference to line 2, in other words, six per cent of original cost, can you tell me what the comparable figure for line 9 would be? A. Relating solely to interest on the investment?

Q. That is right. A. On that basis the return at six per cent would be about \$133 for the portion of the space used by the Edison Light and Power Company.

Q. And how much would that be per square foot? A. Approximately six cents.

Q. Why did you use the one basis in computing your annual rental cost for line 2 on a basis of fifty cents and the basis which you use in line 9, why would you not use the same basis in line 9 as you did in line 2? A. The situations are not comparable in any manner. In the case of the space occupied by the Company in the carbarn you are supplied light, heat, janitor service, fire protection, watchman service. In other words, it completely maintains the building, and in the other case you simply have the use of bare ground.

By the Commissioner:

Q. Do you get heat in the carbarn? A. Yes, there is heat in the carbarn. That would be comparable to taking the rental return on a bare lot and saying that that should be the basis for the return that you would pay for an apartment, in which all the services are included.

*Harry A. Reed—For Respondent—Cross*

By Mr. Miller:

Q. How did you arrive at your fifty cents per square foot figure? A. I estimated that fifty cents a square foot for the type of space which this company required for its storage facilities was a reasonable price to pay in my judgment, based on my knowledge of that class of property in various sections.

By the Commissioner:

Q. Mr. Reed, what do they get; do they get storage room that is closed off and heated and lighted, or is it just out on the open floor in the carbarn? A. It is the rear end of the carbarn that is given over to the Edison Light and Power Company.

Q. But it is not enclosed and lighted and heated as a separate unit? A. Not as a separate unit, no sir.

Q. It is part of an open floor? A. It is part of an open floor, but they have the benefit of all of these facilities, which they would have to supply in some way somewhere if the Maryland Avenue carbarn were not available.

(Discussion at the instruction of the Commissioner off the record.)

By Mr. Miller:

Q. Now take line 10. Will you give me the total area of the North George Street freight station in square feet and the total original cost?

Mr. Miles: You are asking these questions without land. You intend to do that?

Mr. Miller: What is that?

Mr. Miles: You are asking him to give you this information in each instance without the land. You intend to do that?

Mr. Miller: Yes, if that is the basis of the computation in the exhibit, and I assume it is.



*Harry A. Reed—For Respondent—Cross*

Mr. Miles: Of course, he has not said any such thing, and I don't assume that it is.

The Commissioner: What do you mean, you mean the land surrounding the barn.

Mr. Miles: I mean the land on which the barn is erected.

The Commissioner: Well, the land on which the barn is erected is the square footage of the barn roughly.

Mr. Miles: Yes, but he has in response to these questions only given the original cost of the structure itself and not the land upon which the structure rests. It seems to me that has quite an important bearing on it.

By Mr. Miller:

Q. Is this figure on line 9 of 2,128 square feet, does that represent land and building?

Mr. Miles: No, that represents—

The Witness: The space occupied.

By the Commissioner:

Q. The floor? A. The floor area of a building located on a lot.

By Mr. Miller:

Q. All right, I want the figure comparable to that. Is that what you are giving me, Mr. Reed? A. I know of no way to give that to you because the carbarn does not occupy the entire lot.

By the Commissioner:

Q. I understand the figure that you gave, Mr. Reed, is the original cost of the carbarn structure? A. That is correct, and that only.

The Commissioner: What I suppose we want to have is a comparable figure here as to the cost of the

*Harry A. Reed—For Respondent—Cross*

structure plus the cost of land on which the structure rests.

Mr. Miller: That is true for any basis for allocation of return on original cost, but what I am trying to get is the proportion of building space occupied by York Railways Company the portion of building space occupied by Edison Light and Power Company.

The Commissioner: I think that is quite exact, but it seems to me, Mr. Miller, in making a calculation which is to be related to the calculation of the amount of rental for use of part of the area within a barn you must have as a comparable figure the cost of the land plus the cost of the structure on which you are paying rent.

Mr. Miller: The cost figure should be a combination of the land and building. The space figure should be the building alone, is what I want Mr. Reed to give.

The Commissioner: The building, of course, but I mean in computing any figure on which you are determining whether the amount of rental is reasonable you certainly must have the figure of the land plus the building.

Mr. Miller: That is true.

The Commissioner: Was this figure for land and building?

Mr. Miles: Oh, yes, they are all there.

(Remarks by the witness at his request off the record.)

By Mr. Miller:

Q. What is the land used for outside of the area occupied by the building? A. Car barn, tracks, storage purposes and so forth. It is all necessary land for the car barn at that point.

Q. But it is not used in any way by Edison Light and Power Company except for entrance and exit, is it?

*Harry A. Reed—For Respondent—Cross*

By ~~the~~ Commissioner:

Q. That is the land outside of the barn? A. Yes, sir.

Q. Then outside of the barn the land is used exclusively by York Railways Company for its purposes? A. Yes, and access to the barn.

Q. Of course, but I mean outside of that. The land in question here, 2,128 square feet, is storage space within the barn structure? A. That is correct, on which basis am I to give it?

By Mr. Miller:

Q. We would like to have you prepare your computation based on the original cost of the building plus the original cost of the proportion of the land occupied on which the building is situated.

Mr. Miles: In fairness, I don't want to be objecting to what Mr. Miller wants, but he has just as good mathematicians sitting beside him as we have over here, and has all the data in front of him. If he wants to make a calculation which we think has no relevancy whatever in this exhibit we think he should do it through his own witnesses.

The Commissioner: All the facts that are needed to make the calculation are in Exhibit 2 and Exhibit 9.

Mr. Miles: That is right; yes, sir. The same data upon which we must rely to make it.

Mr. Miller: Except that the original cost is not in the record as yet.

Mr. Miles: You have a copy of it if it is not in the record.

The Commissioner: Let us have that matter clear. As I stated before, whether it is original cost or anything else, any relevant factor as to property of York Railways used by Edison Light and Power for service

*Harry A. Reed—For Respondent—Redirect*

to others than York Railways Company, in whole or in part, I maintain the position that I would like testimony as to it in the record. I stated clearly that I didn't mean by that to have it considered that all of the property included would be considered in our calculation. We may reject or use it, but I said it would be admitted to the record for consideration by the Commission. Any calculation of this kind you want to make in relation to these four items, any information that is available; whether it is in the record or in some volume in which part of this record lies ~~can~~ be used for this purpose.

Mr. Miller: Yes, I think we can make the computation, Mr. Commissioner. That is all the cross examination I have on this exhibit.

*Redirect Examination*

By Mr. Miles:

Q. Mr. Reed, referring to this exhibit, may I ask you whether the extent to which York Railways Company uses any of these jointly owned facilities interferes in any way with the use of those facilities by the respondent? A. No, sir.

Q. Now, if the respondent were compelled to move its units of property mentioned in this statement that you have referred to, to some other location; would it not have to duplicate facilities which it now uses and which are now on property owned by the York Railways Company? A. Yes, sir.

The Commissioner: It would have to duplicate these facilities, Edison Light?

Mr. Miles: Yes.

By Mr. Miles:

Q. Now, to illustrate further, let us take line 5, which shows 410 poles owned by the York Railways Company and used by Edison Light and Power Company? A. Yes, sir.

*Harry A. Reed—For Respondent—Redirect*

Q. We have assumed for the purpose of this exhibit that those poles are worth only the original cost paid by York Railways Company, have we not? A. Yes, sir.

Q. Can you state, or have you available other data from which you can tell me whether the reproduction cost of those poles—that is, whether the cost which Edison Light and Power Company have to pay if it now replaces those poles is less or greater than the original cost of those 410 poles? A. There is not a great deal of difference.

Q. So that the price level, in other words, is about the same? A. I think it would be approximately the same.

Q. Now, assuming that Edison Light and Power Company invested approximately the same amount of money in the same number of poles, can you state whether or not, assuming that it was allowed a return of annually six per cent, can you state whether or not six per cent plus a necessary allowance for depreciation and maintenance would be equivalent to ten per cent of its investment? A. I think it would probably be more than ten per cent on its investment.

Q. Probably more than ten per cent on its investment? A. Yes, sir.

Q. So that in all of the instances disclosed on this statement where we are talking about poles, if the Edison Light and Power Company were required to move to some other tract or site and to erect its own poles, it would have an investment comparable to the original cost here, would it not? A. For the same number of poles, yes.

Q. It would clearly be entitled, would it not, to a return on that investment when it once became a part of its rate base? A. Yes, sir.

Q. Plus some reasonable allowance for its depreciation and maintenance? A. Yes, sir.

Q. Now, isn't that same situation true with respect to all of the other physical property that was referred to on this

*Harry A. Reed—For Respondent—Redirect*

exhibit as distinguished now from the space which it leases in buildings? A. And the rent.

Q. And the rent? A. Yea, sir.

By the Commissioner:

Q. How about trolley poles, how are they spaced in relation to ordinary electric poles in the ordinary setup of any electric company, are they closer together than ordinary poles?

A. I think in general they are closer together.

Q. What I am trying to get at is, if the Light and Power Company could not use these trolley poles, would it have to use 1009 poles of its own? A. You have most of those located in the city districts where the spacing is somewhat arbitrary, you have to be governed more by existing conditions in your spacing of poles than you have to in the country districts.

Q. You don't have much choice as to where you can put your poles? A. And there are other facilities existing that you have to avoid, so that you get into arbitrary distances that are not perhaps economical spacing for distribution of its service.

Q. In other words, your position is as to that particular item of 1009 trolley poles that whatever the cause of the conditions that would be put upon your Company in placing those poles and setting them, that the cost of replacing those 1009 poles, whether they were 1009 or some other figure, would amount to at least that much? A. I think generally so. I have not made a careful study from that standpoint, but I think that is generally the position.

By Mr. Miles:

Q. Now, Mr. Reed, I want to refer next to the leasing of a part of these buildings. Let us take first the Maryland Avenue car barn. As I understand this statement, the respondent leases 2,128 square feet of that building. A. They use 2,128 square feet in that building.



Q. I mean use, correct. Now, suppose it was no longer permitted to use that building, would it or not require a comparable space in some other building in York? A. It would.

Q. Have you any reason to believe it could or could not lease space in some other building in York at less than the figure that you have stated here?

Mr. Miller: I think I will object to that. I don't think Mr. Reed is competent to answer that question. He has not qualified as a real estate expert.

By the Commissioner:

Q. Mr. Reed, do you know what the real estate situation is in York, and what space can be rented for in other buildings, have you checked on that at all? A. I have not checked on the question of the costs of rental space.

Q. Could you answer the question accurately just asked by Mr. Miles?

The Commissioner: I don't want to rule against the witness answering the question if he knows.

Mr. Miles: I say quite frankly to Your Honor that I don't want him to if he didn't make an investigation. I was informed and I understood that he had.

The Commissioner: Instead of ruling on it I asked Mr. Reed if he had made an investigation of that particular thing, real estate rentals in York with relation to this type of space.

Mr. Miller: If he didn't make an investigation, Mr. Commissioner, he could hardly be familiar with it.

Mr. Miles: I disagree with that.

The Commissioner: He may not have made an investigation as to any particular item and still be familiar because there are other matters that he studied in connection with the general situation. If he does not know he can say so.

*Harry A. Reed—For Respondent—Redirect*

(Last question read.)

By the Commissioner:

Q. Do you know, and don't try to answer the question if you don't know? A. I have not made any study on the question of rental costs in connection with this, and I cannot answer that part of the question.

The Commissioner: I will sustain the objection.

By Mr. Miles:

Q. Now, Mr. Reed, will you refer to Respondent's Exhibit No. 2—do you have it available—will you refer in that exhibit to the reproduction cost of the Maryland Avenue carbarn, both the structure and the land upon which the structure rests, and tell us what the reproduction cost is?

The Commissioner: Where is it; what page is it on? Do you know?

Mr. Miles: The structure is on page 414, Mr. Commissioner.

The Witness: Your question was the size and cost? (Last question read.)

The Witness: \$76,298.

By Mr. Miles:

Q. Will you give me the reproduction cost for the land and buildings known as the North George Street freight station, and referring to the line on the statement with respect to which you have been testifying?

(Discussion at the instruction of the Commissioner off the record.)

The Commissioner: I take it you are going to ask as to these four parcels?

Mr. Miles: No, I am just going to ask him as to these two, Your Honor.

*Harry A. Reed—For Respondent—Redirect*

The Commissioner: I thought if you were we could have the calculations made later on.

The Witness: The combined reproduction cost of land and structure on the North George Street freight station is \$43,693.

By Mr. Miles:

Q. Now, as I understand in your last two answers, you have given the reproduction cost of the two structures involved and the area of land occupied by these two structures? A. No, sir, I have given the reproduction cost of the structures and reproduction cost of the plot of land on which the structures are located.

Mr. Miles: That is what I intended to ask you.

By the Commissioner:

Q. What are you saying? Are you eliminating anything?

A. No, sir, I am taking the value of the plot on which the structure is located.

By Mr. Miles:

Q. The particular plot on which the structure is located?

A. That is right.

By the Commissioner:

Q. And as to the structure you are only taking that part used in part by the Edison Light and Power Company, and not the particular structures on the land that are only used exclusively by the York Railways Company; you are not including those? A. No, sir.

Q. A special shed or something like that? A. That is right. The information given in my last statement about the North George Street property was included on page 319 and page 420

*Harry A. Reed—For Respondent—Redirect*

of the reproduction cost estimate of York Railways Company included in Respondent's Estimate No. 2.

By Mr. Miles:

Q. With respect to the estimates of annual rental costs included in the statement regarding which you have just been testifying on lines 9 and 10, 11 and 12, will you state the basis of those estimates?

Mr. Miller: I have no objection to that.

The Witness: The basis of the estimates of rental for the items included in lines 9, 10, 11 and 12 was a judgment figure on my part of what I thought it would cost the Company to rent the same kind of space that they are now occupying.

By the Commissioner:

Q. Not supported, however, by a knowledge of rentals charged in and about York for comparable plots or buildings?

A. No, sir.

Q. But within your general experience? A. Within my general experience and an investigation in York showing that the kind of building that we require would be a very hard one to acquire, which is not a normal type of structure.

By Mr. Miles:

Q. Mr. Reed, in the course of your cross examination I think you made some reference to an agreement between the York Railways Company and the Edison Light and Power Company with respect to the maintenance and replacement of the poles. Did you or did you not mean to imply by that statement that there is any written agreement in existence with respect to that? A. No, sir. As I advised Mr. Miller in his cross examination it is our understanding that there is no written agreement. It is an oral agreement between the two companies.

*Harry A. Reed—For Respondent—Edison*

Q. It is a matter of policy? A. Yes, sir.

Q. And the management is the same in both companies?

A. The executive officers, the top executive officers, I would say.

The Commissioner: In other words, Mr. E. agrees with Mr. X that they will do this.

Mr. Miles: That is exactly what I want.

Mr. Miller: That is all I have at the present, Mr. Reed.

Mr. Miles: We desire to offer in evidence at this time the statement to which the witness has been testifying and ask that it be received in evidence and marked as Respondent's Exhibit No. 10.

Edison Light and Power Company analysis of property owned by York Railways Company and used by Edison Light and Power Company including analysis of joint used facilities as of November 30, 1936, produced and marked Respondent's Exhibit No. 10, E. E. W., 3/11-12/37.

Mr. Miller: I desire to object to its admission into evidence, Mr. Commissioner, because the annual rental cost figures which are the express purpose of the exhibit take in account the joint use of certain of the facilities set forth in the exhibit by Metropolitan Edison Company and York Railways Company, but they place the entire burden of the return upon the estimated original cost of those facilities upon the Edison Light and Power Company, the respondent. Secondly, some of the figures are arrived at by using the four per cent figure for depreciation and maintenance which the witness testified was simply a judgment figure, and which was not supported by a break-down, or by anything more than his mere judgment.

*David Kaye—For Respondent—Direct*

The fifty and per square foot figure used in arriving at the amounts in Items 9, 10, 11 and 12 are stated by the witness to be a judgment figure arrived at without an investigation of comparable facilities in York and without detailed knowledge of prices in York. The four items of figures are based upon original cost computations, or of reproduction cost computations, not upon fair value figures and they represent a return upon original cost and not upon fair value.

The Commissioner: I will overrule the objection, and rule that Exhibit No. 10 shall be admitted to the record for consideration by the Commission in this matter. Of course, the mere admission of this or any other exhibit does not bind the Commission as to its conclusions, or indeed any exhibits filed by the Commission.

The Commissioner declared a recess until one thirty o'clock P. M.

*ARTHUR ROCHER*

DAVID KAYE, a witness called in behalf of the Respondent, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miles:

Q. Will you please state your name and occupation? A. David Kaye. I am Assistant Treasurer of Day and Zimmerman, Incorporated.

Q. Now, will you state your past experience and training in accounting matters? A. I have been associated with Day and Zimmerman, Incorporated, since the early part of 1921, a period of fifteen years, during which time I have conducted or have assisted other members of said organization in con-



*Invest. Rate—Per Receipts—Invest*

during financial, accounting and general business investigation in connection with valuations, rate and capitalization matters with respect to public utilities and general business surveys and studies with respect to industrial enterprises.

Q. Will you name some of the companies with respect to which you have conducted investigations during your association with Day and Zimmerman? A. I have conducted examinations in connection with the New England Power Association and Subsidiaries, of Boston, Massachusetts;

The Interborough Rapid Transit Company, New York;

New York Railways of Rochester and Syracuse, New York;

Commonwealth Steel Company, Granite City, Illinois;  
Edward G. Budd Manufacturing Company, Philadelphia, Pennsylvania;

Scranton Springbrook Water Company, Scranton, Pennsylvania;

Mohawk-Hudson Power Company and Subsidiaries, Albany, New York;

Public Service Gas and Electric Company of New Jersey, Newark, New Jersey;

Commonwealth Edison Company, Chicago, Illinois;  
Consolidated Gas Company of New York and Subsidiaries, New York;—

Mr. Miller: We are prepared to admit Mr. Katz' qualifications generally.

Mr. Miles: Well, because of certain matters that might be raised in the case we would rather complete his qualifications. We will be rather brief about it.

The Witness: National Public Utilities Corporation and Subsidiaries, Philadelphia, Pennsylvania, headquarters at Philadelphia;

*David Katz—For Respondent—Direct*

Terrehaute Indianapolis Traction Company, Indianapolis, Indiana;

Torrington Electric Company, Torrington, Connecticut;

Oklahoma Public Service Company, Tulsa, Oklahoma;

Western United Gas and Electric Company, Aurora, Illinois.

Mr. Miles:

Q. Mr. Katz, prior to your association with Day and Zimmerman what generally was your general accounting experience, and particularly as it relates to public utility companies? A. I was an examiner of accounts for the Public Service Commission of the State of New York, which position I occupied from the year 1916 to 1922, about the middle part of 1922, a period of about six years.

Q. And what were your duties in that capacity? A. During this period I conducted accounting investigations and prepared reports for the Commission in connection with petitions before the Commission for authority to issue stocks, bonds and for evidence of indebtedness, and also in matters pertaining to rates.

Q. Now, without going into much detail in response to this question, just name three or four of the companies that you worked for in your capacity for the Public Service Commission in New York? A. Many of the companies with which I was concerned in those years have since lost their identities. However, the former titles of some of the companies are, The Rondack Power and Light Company, whose headquarters at that time were at Amsterdam, New York;

Northern New York Utilities, Watertown, New York;

Central Hudson Gas and Electric Company, Poughkeepsie, New York;

Fulton County Gas and Electric Company, Gloversville, New York;

*David Katz—For Respondent—Direct*

Q. Any railway companies? A. The Binghamton Railway Company, Binghamton, New York;

The Mountain Home Telephone Company, Plattsburg, New York.

Q. Prior to your association with the Public Service Commission in New York, which was immediately preceding your association with Day and Zimmerman, what was your occupation? A. Previous to my association with Day and Zimmerman was examiner of accounts for the Public Service Commission.

Q. I understand that. I say prior to your position as examiner of accounts what was your occupation? A. I occupied minor executive positions concerned with accounting matters covering a period of approximately five years with the Schenectady Railway Company and the Central Hudson Gas and Electric Company of Poughkeepsie, New York.

Q. Mr. Katz, have you supervised an investigation of the books and accounts, physical affairs of the Edison Light and Power Company? A. I have.

Q. What has been the general scope of that investigation? A. The scope of my investigation generally speaking falls into substantially three categories.

First, an investigation and analysis of the existing records of the respondent and its predecessor and affiliated companies, for the purpose of ascertaining historically the accounting policies and the character and extent of the entries recorded as fixed capital, covering a period from the date of the earliest available records to and including December 31, 1936.

Second, was an examination of the underlying data which go into the accounts concerned with the earnings and expenses as recorded on the books of the company during the year ended December 31, 1936.

Third, an investigation of the administrative and operating personnel of the respondent for the purpose of ascertaining the

*David Katz—For Respondent—Direct*

character and extent of services rendered to its affiliates on a joint operating basis during the year ended December 31, 1936.

Q. How long did this examination or investigation require?

A. The initial work in the field was undertaken in the latter part of October, 1936, and such field work was completed on or about February 12, 1937.

Q. How many persons assisted you, Mr. Katz, in the investigation? A. There were two accountants employed on this assignment, under my direct supervision continuously during the period of our investigation. An additional man was assigned in the work of pursuing an analysis of the so-called donated capital situation, and this work started on or about December 13, 1936 and was completed on or about February 20, 1937, with the exception of two weeks, during which time I was temporarily incapacitated, I was continuously engaged on this investigation.

Q. Mr. Katz, I hand you a tabular statement entitled, "Summary statement showing gross additions and retirements by years as abstracted from the books of accounts of the respondent and predecessor companies and as adjusted for the examination of net excess values created in connection with the revaluations of plant and property of predecessors companies and other accounting adjustments status as at December 31, 1936," and ask you whether that statement was prepared under your personal supervision and constituted a part of the investigation to which you have referred? A. It is.

Q. Now, will you explain briefly what this exhibit purports to reflect, indicating the particular significance of each of the columns indicated? A. This exhibit is a summary showing the gross additions, retirements and adjustments of fixed capital as reflected by the books of accounts of the Edison Light and Power Company and its predecessor companies. The combined period covered by our analysis extended from the year 1887 to and including December 31, 1936.

*David Katz—For Respondent—Direct*

Q. Now, what is column 1? A. Referring to column 1 of this exhibit, which is designated as gross additions, as recorded by the Company, represents the debits as reflected in the several accounts of the respondent and its predecessor, which in accordance with accounting practice in effect during the years covered by our analysis, were recognized as representing additions or adjustments thereof to the plant and property of the respondent.

Q. That is the figure that totals \$5,908,042? A. That is correct.

Q. Do I understand, Mr. Katz, that you start with the figure of \$69,160? A. Yes, sir.

Q. And by adding gross additions from that point on you reach the total indicated at the foot of the column? A. That is true.

Q. All right. Now, column 2, what is that? A. Column 2 of this exhibit which is designated as retirements, as recorded by the company, represents the credits as reflected in the several accounts of the respondent and its predecessor companies which, in accordance with accounting practice in effect during the years covered by our analysis, were recognized as representing retirements or adjustments thereof, covering purported retirements of plant and property of the respondent.

Q. So that column 2 is retirements from a plant and property beginning with 1888, column 1, as you have said, as gross additions to plant and property? A. Yes, both as recorded by the books of account.

Q. In other words, no changes have been made by you in this tabulation from what the books show? A. That is true.

Q. Now, column 3, as I take it is additions resulting from the subtractions of the retirements from the gross additions? A: That is true. Column 4, 5 and 6, as shown by this exhibit represent adjustments made by us for the elimination of values created principally in connection with the acquisition of plant and property by the respondent and its predecessor companies,

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and other accounting adjustments affecting the recorded fixed capital additions and retirements as disclosed to us as the result of our examination of the books and records.

The net adjustments as shown under column 6, resulted in decreasing the net additions as recorded by the company's books by an amount of \$375,210.

Q. Now, the last four columns? A. Columns 7, 8 and 9 of this exhibit are arrived at by adding or deducting, as the case may be, the amounts shown in columns 4, 5 and 6, to or from amounts shown in columns 1, 2 and 3 respectively.

In column 10 of this exhibit is shown progressively the adjusted accumulative balances by years covered by each of the years under review as indicated by the exhibit.

Q. And what amount have you arrived at as representing the fixed capital balance as shown by the books of the company on December 31, 1936 after such adjustments as were disclosed by your examination? A. \$4,578,793.

Q. What amount is shown on the books of the respondent as of December 31, 1936, as representing its investment in fixed capital? A. \$4,954,003.

Q. That is the total in column 3? A. Yes, sir.

Q. Do I understand, therefore, that you have reduced the balance of fixed-capital as shown on the books by an amount of \$375,210? A. That is correct.

Q. Which is the total shown in column 6? A. That is correct.

Q. Now, will you explain somewhat generally the character and extent of the principal items embodied within your net adjustment of \$375,210? A. The principal item concerned with this net adjustment resulted from a revaluation of the fixed capital of the respondent in the year 1907. This revaluation was made incidental to the acquisition of certain securities, including those of the respondent, by Wrightsville and York Street Railways Company, from Brown Brothers and Company



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acting as syndicate managers, in accordance with an agreement dated July 1, 1907.

The revaluation resulted in an increase of fixed capital of \$1,715,067 over the amount as reflected by the books of the predecessor company, which was the Edison Light Company of York as then constituted, and subsequently in the year 1913 incidental to a consolidation and merger involving fourteen non-operating electric companies, York Windsor Electric Light Company and Edison Electric Light Company of York, which merger formed the first Edison Light and Power Company. The fixed capital at that time was again revalued. This latter revaluation resulted in a decrease of fixed capital of \$1,352,926. The difference between the excess value of \$1,715,067 created as the result of the 1907 entry and the decrease of \$1,352,926 resulting from the 1913 merger resulted in a net excess value of \$362,141. This amount therefore accounts for the greater part of the decrease in fixed capital of \$375,210, as shown under column 6 of the exhibit. The other net adjustments consisted of other miscellaneous debit and credit items which were disclosed as the result of our examination of the books and records.

Q. Now, Mr. Katz, from your knowledge of the books of account and the accounting policies in effect throughout the period covered by your examination, would you say that the figure of \$4,578,793 shown as the fixed capital account as of December 31, 1936, after incorporating certain adjustments which you had made, represents the original cost of the property of the respondent? A. There are obvious reasons why it is not possible to label as original cost the results obtained from our investigation of the books of account of the respondent and/or its predecessor companies as shown by this exhibit.

Q. Why do you say that? In other words, what are some of the reasons? A. Well, for instance, in the earlier periods prior to the adoption of the present uniform classification of

*David Katz—For Respondent—Direct*

accounts, that is during the period between July 1, 1919 and January 1, 1925, costs covering services of a supervisory or administrative character, which under present procedure would be, in a measure, applicable as an element of original cost of plant and property, were then entirely distributed to operating expense accounts. Our analysis also indicates that certain other elements entering into a proper determination of the original cost of plant and property of the respondent were inadvertently charged against operating expenses or to other income deductions during the years prior to 1925. The general character of such items are those which are recognized as properly a part of fixed capital under Account Nos. 292 to 296, as prescribed by this Commission.

Q. Mr. Katz, what character of capital expenditures are included within those account numbers that you have just mentioned? A. Account 292 covers law expenditures during construction.

Account No. 293 covers injuries and damages during construction.

Account No. 294 relates to insurance during construction.

Account No. 295 embraces taxes during construction.

Account No. 296 covers interest during construction.

Nothing is recorded on the books of the respondent prior to the year 1925 in its fixed capital accounts for items included within any of the accounts I have just mentioned.

Q. Well, did you find prior to 1925 any such items charged against operating expenses? A. I do know that the salaries and expenses of personnel whose duties would be concerned with the supervision of both operations and the construction of the company's facilities were prior to that time, prior to January 1, 1935, entirely absorbed into operating expense accounts.

Q. Now, in addition to the reason which you have already given, namely, that there are no capital expenditures shown within the purview of Accounts 292 to 296, what other reasons,

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if any, occur to you why the figure of \$4,578,793 does not reflect original cost of the respondent property? A. In my opinion any procedure or effort which has as its purpose the determination of the original cost of the existing plant and property of a given utility by strict adherence to its books of account, must of necessity be supported or amplified by details of a character which will enable proper identification of the property by assembled units in order to permit verification in the field of the actual existence of such property. Such a determination was not and is not possible from the existing books of account of the respondent.

Q. Meaning by that that the books do not disclose whether all of the property embodied within the \$4,578,000 item actually existed and is a part of the present plant and property? A. That is true.

Q. Now, can you out of your experience or knowledge in your particular field of work suggest any procedure that could be adopted by the respondent to permit a determination of the original cost of its property by means of an examination of its fixed capital accounts? A. Yes, I believe I can. I think this can be accomplished only by the adoption and maintenance of what is commonly referred to as a perpetual inventory or a continuing property record tied in with the fixed capital accounts in such a manner that existing and used units of property are at all times recorded and identified in the fixed capital accounts. As a matter of fact the Federal Power Commission promulgated an order, effective January 1, 1937, requiring all utilities subject to its jurisdiction to install and maintain such an accounting system, and I am advised that the Pennsylvania Commission has adopted with certain reservations this classification.

Q. Now, suppose you, by way of illustration of what you have just said, point out certain units of property now owned and used by the respondent in the rendition of its business, but which cannot possibly be identified from an examination of its books as part of its fixed capital on December 31, 1936? A.

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Well, in connection with the preparation of our original cost estimate I had occasion to try to locate from the records certain items which by our inventory were shown to be existing today, and we found that nowhere in the records of the company relating to its fixed capital can anything be found specifically referring to the original cost. For instance, the old boiler room, the old engine room, the present rotary and switchboard room, or the old battery room, all a part of the generating facilities structure. This is but one of the numerous instances where the cost of specific units cannot be identified or determined from the accounting records. Such costs, hence, can only be ascertained by an estimate of a competent engineer, and which estimate must be related to the date of installation with price of labor and materials then prevailing.

Q. Now, will you for the record give us your definition of original cost as you are using it in this case? A. The Uniform System of Accounts as prescribed by the Federal Power Commission for public utilities and licenses which classification, as I previously stated, has been adopted by the Public Service Commission of the Commonwealth of Pennsylvania, defines original cost as the cost of property to the person first devoting it to public service.

Similarly the Classification of Accounts as prescribed by the Public Service Commission of the State of New York for its electric companies coming within its jurisdiction define original cost as the actual money cost, or the current money value of any consideration other than money, of property at the time when it was first devoted to the public service, whether by the accounting company or by a predecessor public utility. This latter definition, while not greatly at variance with the former, represents my understanding as to the meaning of the term original cost. In this connection I should like to add that the Classification of Accounts as prescribed by this Commission further sets forth by appropriate instructions and classified

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fixed capital accounts the elements which for the purpose of ascertainment of original cost of plant and property are proper to be included therein.

Mr. Miles: If the Commission please, at this time we would like to offer in evidence and have identified and marked as Respondent's Exhibit No. 11, the statement of additions and retirements to which the witness has been referring.

Mr. Miller: No objection.

Edison Light and Power Company summary statement showing gross additions and retirements by years as abstracted from the books of account of the respondent and predecessor companies and as adjusted for the elimination of net excess values created in connection with the revaluations of plant and property of predecessor companies and other accounting adjustments status as at December 31, 1936, produced and marked Respondent's Exhibit No. 11, E. E. M., 3/11-12-37.

The Commissioner: Respondent's Exhibit No. 11 is admitted to the record.

By Mr. Miles:

Q. Now, Mr. Katz, will you examine the exhibit I just handed you and tell me whether that was prepared under your supervision? A. This particular exhibit was prepared by me personally.

Q. Now, will you state what it is intended to disclose? A. This exhibit shows the distribution of the salaries of administrative officers and certain employees, including the related items of liability, workmen's compensation and unemployment insurance premiums to the separate classes of utilities furnished by the respondent and affiliated companies in the city of York and vicinity, on the basis of services rendered during the year ended December 31, 1936.



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Q. And the purpose of the chart is to show what? A. The purpose of this chart is to show the extent to which the supervision and other operating salaries of personnel of Edison Light and Power Company have been absorbed by the other jointly operated utilities, on the basis of operating results for the year ended December 31, 1936.

Q. Now, the block at the very top of the photostat which contains no number is intended, as I construe it, to designate the four affiliated companies and the character of service that they render? A. That is true.

Q. And to the right of it is a little block entitled, "Glen Rock Light and Power Company." Now, what is intended to be disclosed by the information in blocks numbered 9 and 10?

A. Blocks 9 and 10—well, those blocks show that with one exception the Board of Directors who served for the four companies shown in the first block also served the Glen Rock Light and Power Company, which while not a subsidiary is an affiliated company. The one exception that I speak of is Mr. Gordon Campbell, who appears as a Director for the Edison Light and Power Company and its affiliates, does not serve on the Board of Directors for the Glen Rock Light and Power Company, and his place on that Board is occupied by Mr. P. A. Russel.

Q. Now, look at the block entitled, "Administrative officers," and tell us what you mean there by, "Distribution of salaries and insurance"? A. The block designated as 4 on this exhibit shows the distribution of salaries and related liability compensation insurance and State and Federal unemployment taxes. The four administrative officers consist of the President and General Manager, Vice President Treasurer and Purchasing Agent, Vice President Secretary and Auditor.

By the Commissioner:

Q. Who serve all four companies you mean? A. Yes, sir.



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By Mr. Miles:

Q. In other words, Mr. Wayne, who is listed as President and General Manager; Mr. Ludwig, Auditor; Mr. Barnitz, Vice President Treasurer and Purchasing Agent, and Mr. Stees, all served all four of these companies in these capacities, is that right? A. That is true.

Q. Now, what do you mean by percentage of distribution which is reflected in the block, entitled, "Administrative officers"? A. That represents the percentage that each of the joint utilities shown thereon—rather it shows the extent as a percentage relation of the total salaries absorbed by each of these four or five utilities shown on the chart.

Q. Do I understand from that that Edison Light and Power Company, for instance, pays seventy-five per cent of these total administrative salaries? A. That is true.

Q. And the other companies in proportion to the percentage that is indicated in the block? A. That is true.

By the Commissioner:

Q. On what basis is that allocation made? A. That allocation is based on the judgment of the particular officers, or as a group of these respective utilities.

Q. Taking their judgments as to how much of their service is given each of these companies? A. That is right.

By Mr. Miles:

Q. Now, let us drop down on the chart, Mr. Katz, to the five blocks spread across the sheet, entitled, "General office clerks," "Superintendent of Power and Transmission," "Superintendence of distribution," "Assistant Purchasing Agent and Stores Department," and "Commercial Department," respectively, and explain briefly what is reflected by the data disclosed on each of those blocks? A. Taking the block which is indicated as No. 5, covers the salaries and related insurance expenses of fifteen employees whose functional duties are designated by

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their respective titles in the lower part of that block, which shows the number of such functional employees and the aggregate annual salaries for the number indicated.

Q. Here again by way of illustration under, "General Office Clerks," the total salaries of the fifteen employees is \$21,686?

A. That is correct.

Q. Of which amount the respondent pays 73.2 per cent or \$15,866? A. That is correct.

Q. And the Railways 12.4 or \$2,682? A. That is correct.

Q. Now, that same character of disclosure is shown on the four other blocks which I mentioned a moment ago, which are to the right of the one you just discussed? A. The same procedure was followed in each of those blocks.

Q. The same with respect to block 7, entitled, "Legal Department"? A. Yes, sir.

Q. Block 6, entitled, "Other General Office Personnel," and the block in the lower right hand corner entitled, "New Business Department"? A. That is correct.

Q. And then in the center of the sheet at the bottom is a summary of the whole thing, is it not? A. That is right.

Q. Now, suppose you just discuss that summary briefly as to what it discloses so there may be no misunderstanding? A. The summary shows that there were fifty-seven joint employees whose services during the year 1936, rather whose salaries and related insurance expense during the year 1936 were absorbed on a proportionate basis by York Steam Heat Company, York Railways Company, York Bus Company, Glen Rock Light and Power Company and, of course, Edison Light and Power Company, the respondent, of which companies these employees are a part. The total of such salaries and related insurance expense absorbed by utilities other than Edison Light and Power Company is shown in column 6, and amounts to \$25,333.

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By the Commissioner:

Q. What column is that? A. Column 6, of the summary.

Column 7, of course, shows the amount of such total salaries that have been absorbed by Edison Light and Power Company in the amount of \$98,274. The total salaries of the fifty-seven joint employees and related insurance expense, as shown in column 8, which shows a total of \$123,607 of salaries and insurance items, and as I have said before 20.5 per cent of these salaries of \$25,333 were absorbed by the other affiliated companies of Edison Light and Power Company.

By Mr. Miles:

Q. Now, this whole statement or exhibit deals only as I understand your testimony with employees and officers whose time and services are devoted between the four companies and certain insurance premiums? A. Well, they are divided between the four companies which are the affiliated companies, plus Glen Rock Light and Power Company.

Q. That is correct, the five companies? A. Yes, sir.

Q. And in addition to that you are considering the distribution of insurance premiums? A. Yes, sir.

Q. Why do you include insurance premiums in this setup? A. I have included only those insurance premiums which premiums are directly related to the payrolls. In other words, as an employee leaves the company, why the related insurance expense is dropped, because premiums are based on the amount of the payrolls paid.

Q. Now, Mr. Katz, have you in the course of your investigation personally made a study of the extent, if any, to which the respondent would be obliged to absorb those expenses, now shared by it with the other four companies in the event that no joint arrangement existed between the five companies for the services of the employees mentioned? A. I have.

Q. And what was the nature of that study? A. Well, again

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referring to column 6 of the summary it shows that on the basis of actual charges which have been absorbed, or actual salaries and related insurance expenses which have been absorbed by the other utilities. In this connection we conferred with the heads of each of the departments with which this exhibit is concerned, and ascertained from them to what extent they could dispense with the services of employees of their respective departments, in the event that they were relieved of the obligation of service of utilities other than those of the respondent. The result of this investigation indicates that of the fifty-seven officers and employees—

Mr. Miller: I object to that, Mr. Commissioner. The witness is testifying as to hearsay, and has based his judgment on what somebody told him.

Mr. Miles: The witness' testimony will be followed by that of the President of the Company with respect to the allocation of time, and furthermore—

The Commissioner: Followed by the President of the Company, not only to allocate time but determine the salaries paid to these people.

Mr. Miles: Yes, and determine it.

Mr. Miller: As to the President, then the testimony may be proper, but it would have to be followed by all the people with whom Mr. Katz talked.

The Commissioner: I understood him to say that the President will testify not only as to himself but as to the other fifty-six employees affected here, is that right?

Mr. Miles: Yes, as executive head of the Company.

The Commissioner: As executive head, and I suppose, like any other executive head, really has the determining voice in the salaries paid.

Mr. Miller: But in answer to the time allocated, which is a matter of how much time they did spend, I

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think they would know that themselves better than the President would.

Mr. Miles: I am quite willing, if Your Honor please, if it is that important, to bring these various people here at the time of the next hearing to testify, but I cannot imagine why it is important. It seems to me that the testimony of the executive head of the Company, supported by that of a witness who says he has made a certain independent investigation, is sufficient.

Mr. Miller: I don't insist that they be brought here, I just say that Mr. Katz is not competent to testify as to the time spent by them.

The Commissioner: I agree with that, but he says that the information he got on which he based his allocation was received primarily and in major part from Mr. Wayne, and I assume it was Mr. Wayne, and, if so, he is here to testify as to that. I see nothing improper to have Mr. Katz testify as to that.

Mr. Miles: In addition to that, Your Honor, he said that he talked to these various employees and obtained from them an estimate of the allocation of their time.

The Commissioner: I didn't understand that, that his testimony as to the allocation of percentages is based on what he observed. It seems to me that is almost a physical impossibility for any one man to get that by observation.

Mr. Miles: I didn't say what he observed. I say he discussed with these various employees and individuals their duties.

The Commissioner: As a matter of fact, isn't it true that the allocation is in one sense at least an arbitrary one made by the executive head?

Mr. Miles: Not the slightest doubt about that.

The Commissioner: Then I think the pertinent testi-

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mony will go right back to what I have in my mind on that, that the pertinent testimony as to this allocation is Mr. Wayne's testimony, and that Mr. Katz got the division that he has set up on this exhibit probably and in very large part from Mr. Wayne, and I see no reason why he should not testify as to that.

Mr. Miller: The exhibit, Your Honor, was prepared from the records and payrolls.

The Commissioner: Exactly, but these payrolls and the allocations on the payrolls are not a matter of checking these people who reported that they worked so many hours on this and so many hours on that. It is in a very real sense an arbitrary division by Mr. Wayne, and I imagine it would have to be in any such setup, as this. I am not criticizing it from that point of view. It seems to me it must be so to a very important degree, isn't that true?

The Witness: That is true. The statement is merely a statement to indicate what is on the records, and nothing further.

The Commissioner: Exactly. Proceed.

The Witness: The result of this investigation indicates that of the fifty-seven officers and employees whose services are jointly utilized by the respondent and its affiliated companies, the entire services of only four of these employees could be dispensed with, as follows, and they would all be concerned with employees shown in the chart designated as five who are accounting employees. These specific employees that could be dispensed with, as concerned with functions, are a one time clerk at \$1,320 a year; one general accounting clerk at \$1,250 a year; one bookkeeper at \$1,140, and one office clerk at \$1,020, or a total of \$4,740. Now, if we take from the \$25,333 the amount of \$4,740, the difference of approxi-



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mately \$20,000 would represent the benefits which accrue annually to the respondent, in its operating cost—

By Mr. Miles:

Q. Where did you get the cost of \$25,333 that you just used? A. That is in column 6 of the summary on the exhibit.

Q. You have deducted from the total in column 6 of the summary the total of salaries paid to the four clerks or employees whose services you feel could be dispensed with? A. That is correct. So that by that method I arrived at an amount of approximately \$20,000 as representative of the beneficial savings that the Edison Light and Power Company enjoys as a result of this joint use of operating personnel.

By the Commissioner:

Q. I may have had too much lunch, or my mental processes may have stopped completely, but I am afraid I can't follow that. As I understand, these fifty-seven employees do work for the five companies? A. That is true.

Q. Maybe some of these individuals may not have, but, taking them all together, they have done work for all five companies. Now, that is allocated according to this exhibit by \$98,000 to Edison Light and Power and \$25,000 to the other companies? A. Yes, sir.

Q. Now, what work would be done for Edison Light and Power Company if the other four companies were not in the picture that is not done for Edison Light and Power Company by these people now? A. I don't believe I understand your question, Your Honor.

Q. Well, let us put it this way: These people that are now getting \$98,000 for the work they do for Edison Light and Power Company are also getting \$25,000 for their work with the other four companies, and the total is what they are paid, eliminating from that the insurance item? A. Yes.

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Q. Now, I understood these last questions were addressed to you on the basis of what would happen if the other companies were out of the picture, is that right? A. That is right.

Q. Well, if the other companies were out of the picture, what in your opinion would have to be paid to these people for the work that has to be done for Edison Light and Power Company, that is what I want to know? A. The same amount with the exception of these four employees that are now being paid for the entire services rendered to all of the utilities.

Q. Despite the fact that if the work would remain the same for Edison Light and Power Company, and they are doing all the work of that character for Edison Light and Power Company, that work takes 70, 90, 86, 81, 81, 75 per cent of their time? A. That is true.

Q. In other words, there would be—you have not considered the possibility of reduction in salaries because of reduction of responsibility of work? A. That is true. I didn't figure that any responsibility—that that would lessen their responsibility to the respondent company.

Q. Perhaps that might be so as to the general officers, but as to the lower grades, the lowered salaried employees, that would not be true? A. That would be absolutely true. The salaries of these employees are based on their knowledge, their experience, their ability to fill the positions which they occupy. It is not always possible to load up a man one hundred per cent at all times. He sometimes finds himself under one hundred per cent efficient, so that he is always able to take on additional work, up to certain limits, of course, to the extent of twenty per cent—

Q. What you are driving at, in the way I think of it at least, is what annual saving could be made would be by the reduction of personnel by four people? A. That is true.

Q. But I still don't follow what you mean by the benefits accruing to Edison Light and Power Company by the elimination of these four companies. A. Well, what I meant by that was that

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they would still have the same salaries that they now pay, even though some of this work was more or less taken away from them.

Q. From the viewpoint of my process of reasoning, I thought what you were attempting to state was that the Edison Light and Power Company would be burdened with an additional sum of \$20,000 if this setup, this joint setup in the allocation of salary, was not in effect. A. It would in its operating expenses.

Q. That is what I mean. A. The salaries are entirely paid by Edison Light and Power Company, they are employees of the Edison Light and Power Company, they are not employees of these other companies. In other words, these other companies pay no part of their salaries, only as they are charged with a proportionate amount for these services.

Q. Now, just one other question from my angle: The Edison Light and Power Company pays out \$123,607 a year for these fifty-seven employees? A. That is true.

Q. And then it charges the other companies \$25,333? A. That is true.

Q. Now, what happens besides charging these companies, do these companies actually pay into the treasury of Edison Light and Power Company that sum each year? A. Yes, sir.

By Mr. Miles:

Q. Now, the \$20,000 figure that you referred to is the deduction from \$25,333 of the salaries of these four employees whom you expressed an opinion could be eliminated? A. That is true.

Q. Now, Mr. Katz, if I may try to illustrate or to assist in illustrating the point you make, let us take Mr. Wayne as an illustration—and he is a good long illustration—take Mr. Wayne as an illustration, as President of each of these four companies, is that right? A. That is true.

Q. And if these companies were divorced, do I understand that your opinion is that Mr. Wayne, or someone of his equal

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abilities and knowledge, would have to be retained by the Edison Light and Power Company at the same aggregate salary that Mr. Wayne is now receiving? A. That is my opinion.

Q. And he is only paid one salary, isn't he? A. That is all.

Q. And a part of that salary, part of the actual cash for that salary, is paid by York Railways Company? A. Yes, if you put it that way.

Q. Edison Light and Power Company draws a check and Edison is reimbursed by York Railways Company? A. That is right.

Q. Now, does that same system prevail with respect to these general office clerks in the accounting department? A. Yes, sir.

Q. They are all paid by Edison? A. Yes, sir.

Q. But Edison recovers from York Railways Company and the other affiliates certain moneys representing the amount of time that these particular clerks have devoted to these other companies? A. Yes, sir.

Q. And your opinion is that if this company was divorced it would still require for the sole benefit of Edison Light and Power Company, or the sole use of Edison Light and Power Company, the same number of clerks at the same base salaries, is that it? A. That is true with respect to this company.

Q. Except with respect to the four clerks I believe that you said could be eliminated? A. Yes, sir.

Q. And the salaries of the four persons whom you said could be eliminated aggregate \$4,780? A. \$4,740.

Q. Which you deduct from what? A. Which I deduct from the amount shown in column 6, \$25,333.

Q. And that brings you to what sum? A. \$20,593.

Q. And it is that figure which you suggest would result in an increase in operating expenses of the Edison Light and Power Company, is that right? A. That is true.

Q. Now, let us assume that somebody wants to argue with

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you on that point, can you think of any other alternative if that is not a fact? A. I don't believe I understand your question.

Q. Isn't the only other alternative reducing salaries of present employees by that amount? A. That would be the only alternative.

The Commissioner: That is what I asked.

By Mr. Miles:

Q. That is the only other alternative? A. That is the only other alternative.

Mr. Miles: Your Honor, we offer in evidence, and ask it to be marked and received as Respondent's Exhibit No. 12, the statement with respect to which the witness has been testifying.

Mr. Miller: No objection. Of course, we don't want to be taken as admitting the validity of the allocation.

The Commissioner: The exhibit is offered as a statement of the belief of this witness as to what is a proper amount of allocation on information given to him by Mr. Wayne and other officers of the company. It will be marked as Exhibit 12 and received in the record.

Edison Light and Power Company (photostatic) chart showing distribution of salaries of officers and employees to the various classes of utilities on the basis of services rendered during the year ended December 31, 1936, produced and marked Respondent's Exhibit No. 12, E. E. M., 3/11-13-37.

Mr. Miles: And as ascertained from certain other records of the company and the payrolls.

The Witness: May I say something here, Mr. Miles?

Mr. Miles: I am willing.

The Witness: My understanding of your explanation of this exhibit, I don't know whether it is quite clear:

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This is not, of course, my allocation of the time or of the salaries of these employees.

By the Commissioner:

Q. I understand it is the allocation given you, secured by you both from the records and from your discussion with Mr. Wayne and other officials? A. The exhibit itself is entirely from the records. That is just the way the time was distributed during the year 1936, or the salaries.

Q. The allocation was shown on the records? A. That is right.

Q. And the justification for the allocation you discussed with Mr. Wayne and other officers? A. I just wanted to get that straight.

By Mr. Miles:

Q. Are there actual time sheets filed in the records? A. No, not with respect to these allocations.

Q. Now, Mr. Katz, I hand you a volume entitled "Summary Analysis of so-called 'Donated Capital Reserve Account' on the Books of Account and for entries improperly recorded status as at December 31, 1936", and ask you whether that was prepared under your supervision? A. It was.

Q. Now, Mr. Katz, will you state what this exhibit is intended to reflect? A. This exhibit, which is made up of fifteen sheets numbered from 1 to 15 inclusive, is a summary analysis of so-called donated capital reserve account as recorded on the books of account as adjusted for items not yet recorded on the books of account and for entries improperly recorded, the status being as of December 31, 1936. The results of the analysis are summarized on sheet No. 1. The balance which is shown by the books of account in a special reserve account under the title "Donated Capital", as at December 31, 1936, amounted to \$165,746.

Q. What character of contributions were included within



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that book figure? A. The item designated here as Schedule 1 in the summary sheet is the estimated original cost of lines originally constructed and paid for by the customers and subsequently deeded over to the company.

The item designated under Schedule No. 2 consists of the estimated customer's original cost of lines constructed and originally paid for by the customer and subsequently deeded over to the company, but which lines have not yet been inventoried or recorded on the books of the company. It is the same character of items that are shown in Schedule 1, excepting that they are omitted from the column marked column 1, because they don't yet appear on the books of the company. They are carried over into column 2 as an adjustment which should be made to reflect these lines in the so-called donated capital reserve.

Schedule No. 3 represents contributions made by customers as part payment towards the cost of constructing lines built by the company prior to the effective date of this Commission's General Order No. 28.

Items included in Schedule No. 4, which is summarized on this sheet is made up of contributions made by customers as part payment toward the cost of constructing lines built by the company in accordance with Commission's General Order No. 28.

The fifth item represents the original cost of equipment furnished by the company to supply electric energy for the operation of signal apparatus of the Pennsylvania Railroad. The cost of this equipment was eventually repaid to the Edison Company, in consideration of which the latter maintains this equipment.

The sixth category of items is made up of the improvements made to the company's lines which were paid for by American Telephone and Telegraph Company, in consideration for which

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the Edison Light and Power Company assumed the obligation for maintenance and replacement.

Q. Now, the next item there, Mr. Katz, the original cost of equipment furnished by the company to supply certain energy to the Pennsylvania Railroad, that equipment is actually owned and is now the property of the Edison Light and Power Company, is it not? A. That is my understanding, yes.

Q. The same is true of the last item, I take it? A. Yes, sir.

Now, as I said before, the total of column 1 is \$165,746, which represents the amount which appears on the company's books as representative of the so-called donated capital reserve, and they have been classified according to these categories that I have just mentioned.

The second column represents adjustments which we have made in order to reflect on the books such items as were disclosed as the result of our investigation. The total adjustments as shown there under column 2 amount to \$34,199.

Column 3, which is headed "Balances after Adjustments", is a summation of columns 1 and 2, respectively.

Q. What is the character of these adjustments that you have made? A. Well, I will take up the adjustments as they appear for each of these separate schedules.

I will first refer to Schedule 1, which is covered by sheets Nos. 2, 3, 4, 5 and sheet 6. Those sheets are the details which support the summary schedule designated as Schedule No. 1 on sheet No. 1.

Schedule No. 1 under column 2 shows adjustments amounting to \$26,171, which, by the way, is a deduction. The supporting details of these adjustments are included under columns 6, 7 and 8 and are totaled in column 9 of sheet 6 of this exhibit. We found in the analysis of the data making up these accounts that the company, for instance, in column 6 had incurred capital expenditures on certain of these lines prior to the date at which they acquired, and it was, therefore, necessary to make

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charge against this account for such items in the amount of \$15,970. We also found in connection with our analysis of items which are designated here as retirements, made up, however, subsequent to acquisition, shown in column 7, an amount of \$7,230. Under column 8 we found that the company, prior to having acquired these lines, had paid certain of these customers for the privilege of tapping on to the lines to serve their customers, the amount of which is \$2,971.

Now, combining all these adjustments, amounting to \$26,171 resulted in decreasing the reserve which the company permitted for this character of items from \$138,873 to \$112,702.

Now, Schedule 2, shown by the summary sheet, rather than the items underlying Schedule 2, are detailed on pages 7, 8 and 9. In connection with the items shown on Schedule 2 we found that none of these items shown on this schedule have been carried to the company's records, so far as this reserve is concerned. There is one instance in connection with that Schedule 2 that I want to refresh my memory on. Now, it will be noticed on this schedule here that I use estimated customers' original cost of lines constructed and originally paid for by customers and subsequently deeded over to the company, but not as recorded on its books of account. The estimated original cost to customers as used here refers to a preliminary estimate made by the new business manager of the company and is not based upon an inventory of the respective lines or any detailed consideration with respect to unit prices, as was the procedure with respect to similar items reflected in Schedule 1, previously discussed. It has been the policy of the management to defer actual recording upon its books of these lines until an inventory and original cost determination has been made by its engineering staff, so that the amounts as shown under column 6, therefore, are included herein—

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By the Commissioner:

Q. Column 6 of Schedule 2 you are referring to now, sheet 9, is that what you mean? A. Column 6 of sheet 9.

Are included herein on the basis of the preliminary or tentative estimates which were made by the new business manager until such time as the company had occasion to inventory the line, which is usually done at the time some major work is contemplated in connection with some work order that might come up.

The Commissioner declared a recess of five minutes.

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AFTER RECESS

DAVID KATZ, recalled.

*Direct Examination*

By Mr. Miles:

Q. Now, Mr. Katz, let me see if we can hurry along a little further on this exhibit.

(Remarks by Mr. Miles at his request off the record.)

The Witness: Items appearing on Schedule 2, as I said before, have been carried as an adjustment under column 2 in the summary of the exhibit as \$61,704, which, on the basis of these preliminary estimates, should be added to the reserve now appearing on the company's books.

Schedule 3 shows—

By Mr. Miles:

Q. Just one moment. The statements appearing on Schedule 2, you have by cross reference, have you not, related or

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referred to the items appearing on Commission's Exhibit No. 22? A. Yes, the items that appear on Commission's Exhibit No. 22 are by cross reference related to items appearing on Schedule 2.

Q. Now, go ahead with Schedules 3 and 4 and then we will get down to this reconciliation sheet. A. Referring to column 1 on the summary sheet, contributions made by customers prior to Commission Order No. 28, amounting to \$4,801, and the underlying data, the details supporting that figure are shown on sheet No. 10.

By the Commissioner:

Q. Schedule No. 3? A. Schedule No. 3, sheet No. 10, and the adjustments there amount to \$1,334, which is to cover an elimination of duplicate items which were duplicated under Schedule 1. That is, they all appear in Schedule 1, so we eliminate them in Schedule 3.

Column 5 represents the net contribution, as adjusted, made by customers as part payment toward the cost of constructing lines built by the Company prior to the effective date of this Commission's Order No. 28.

Schedule No. 4 is a schedule of similar items as Schedule 3, stating that they were contributions made in accordance with the Commission's General Order No. 28. No adjustments have been made with respect to this schedule, and it shows that the customers have contributed under the terms of General Order No. 28, \$4,053. There are no schedules supporting the last two items on the summary sheet, they appear to be self-explanatory and are really single items.

Sheet No. 12 is a summary reconciliation of Commission's Exhibit No. 22, covering so-called donated capital, with the Company exhibit covering similar items, status as at December 31, 1936. Column 1 is a summary of Commission's Exhibit No. 22, arranged in such a manner as to be comparable with Company's exhibit underneath similar categories. In other words,

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column 1 and column 2, which is designated as "Adjustments to reconcile with Company's Exhibit", and column 3 is the total shown on Company's summary exhibit on sheet 1. The Commission's Exhibit No. 32 shows a total for items of this character amounting to \$267,515, whereas the Company's exhibit submitted here shows a total of \$199,945 for similar items.

Column 2 represents the difference or the adjustments which are necessary to reconcile the Company's exhibit with the Commission's Exhibit No. 22, and then sheets 13, 14 and 15 give the details of that reconciliation, giving the detail of the adjustments which are necessary to reconcile, and thereby cross referenced symbolized here by using the letters A., B., C., and the details of these adjustments are shown on sheets 13, 14 and 15.

By Mr. Miles:

Q. In other words, the total shown on sheets 13, 14 and 15 make up the sum of \$67,570 shown in column 2 of sheet 12, and the sum of \$267,515 shown in column 1 of the same sheet, producing the figure of \$199,945? A. 945, which is the amount shown in column 3 on sheet No. 1.

Q. And is that the amount, Mr. Katz, that you find as estimated original cost of the existing plant and property donated by customers, contributions made by customers towards lines built by the Company? A. With the one exception, and that is, as I explained before, the items appearing on Schedule 2 are based on a preliminary estimate, which is subject to further adjustment, if any, if and when the property is inventoried by the Company, and as to its existence, and as to what the original cost was.

Q. With that exception, this is actually original cost as disclosed by the books? A. Yes, sir.

Q. Have you examined the statement, the statement relating to certain lines built in part or in whole with customers' funds that has been offered in this case as Commission's Exhibit No. 22? A. I have.

Q. Have you any comment to make with respect to that exhibit? A. The statement in question was not based on any



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actual inventory, or upon any analysis of the Company's accounts and records to determine the actual cost of such lines.

By the Commissioner:

Q. Which statement, or which exhibit, No. 22? A. Commission's Exhibit No. 22. The statement is therefore obviously conjectural.

By Mr. Miles:

Q. It was, as I recall it, some figures presented to the Commission at a conference between certain representatives of the Company and representatives of the Commission, was it not? A. That is true.

Q. Are the figures on that statement tied in with the actual book figures? A. Only in certain respects. Where the cost of the lines were actually recorded on the books, or where contributions, for instance, were known to the new business manager as having been made, he has included those—those were in accordance with what was on the books. but in many cases they were based on preliminary estimates made by him from his contact with their contractors and customers who had paid for those lines. It was not the result of any comprehensive analysis as we were obliged to make in order to determine these things.

Q. Mr. Katz, have you any personal knowledge as to whether all of the lines included within your estimated original cost of \$199,945, as shown in the summary on sheet 1 of the exhibit to which you have just been referring, are now actually a part of the used and useful property of the respondent? A. I was not able to determine that by strict adherence to the records. I didn't personally investigate in the field as to whether they actually existed or not. However, we did record as a matter of adjustments herein knowledge which we obtained from the records relating to retirements.

*David Katz—For Respondent—Direct*

Q. Then is your answer that you know or don't know, that is all I am trying to get at? A. I don't know; no, sir.

Mr. Miles: If Your Honor please, at this time we offer in evidence and ask it to be received and marked as Respondent's Exhibit No. 13 a copy of the analysis of donated capital, with respect to which the witness has just testified.

Mr. Miller: No objection.

The Commissioner: The exhibit will be marked as Respondent's Exhibit No. 13 and admitted to the record.

Edison Light and Power Company, summary analysis of so-called "Donated Capital Reserve Account" as recorded on the books of account and are suggested for items not yet recorded on the books of account and entries improperly recorded status as at December 31, 1936, produced and marked Respondent's Exhibit No. 13, E. E. M., 3/11/12/37.

By Mr. Miles:

Q. Mr. Katz, I hand you several sheets bound and entitled "Edison Light and Power Company earnings and expenses as recorded for the year ended December 31, 1936", and ask you whether these statements were prepared under your direct supervision? A. They were.

Q. Now, will you refer to the first sheet of the statement in question and tell us what it contains? I don't mean running over every item, I mean just tell us what the sheet is intended to reflect? A. The first sheet is a summary statement showing the net operating earnings of the Edison Light and Power Company as recorded on the books of the Company for the year ended December 31, 1936.

Q. Have these revenues and expenses been classified in accordance with the Commission's-prescribed system of accounts? A. They have.

*David Katz—For Respondent—Direct*

Q. And are they actually figures taken from the books of the Company? A. They are.

Q. For what year? A. The year ended December 31, 1936.

Q. And you have not adjusted those figures in any manner?

A. I have not.

Q. In other words, this is a mere tabulation of what the books show? A. That is it.

Q. What is sheet No. 2? A. Sheet No. 2 is the detail of operating revenue for the year ended December 31, 1936, arranged to show revenues received under various schedules, summarized and distributed in accordance with Accounts 300, 301, 304, 305, 309 and 328 of the classification of accounts.

Q. That sheet shows the number of customers, kilowatt hours sold, and the dollars received by classification of revenues, does it not? A. That is true.

Q. Now, sheets 3 to 8, Mr. Katz, as I understand it, are nothing more than the detail of the various expenses summarized on sheet 1 under a recapitulation of operating expenses?

A. That is correct.

Q. And you have devoted to each particular expense account one sheet which gives the detail with respect to that account?

A. That is correct.

Q. Is there any particular comment that you desire to make with respect to this exhibit? A. None.

Mr. Miles: Now, we offer in evidence the tabulation of revenues and expenses of the respondent as explained by Mr. Katz, and ask it to be received and marked as Respondent's Exhibit No. 14.

Mr. Miller: No objection.

The Commissioner: It will be marked as Respondent's Exhibit No. 14 and admitted to the record.

Edison Light and Power Company, earnings and expenses as recorded for the year ended December 31, 1936,

*David Katz—For Respondent—Direct*

produced and marked Respondent's Exhibit No. 14, E. E. M., 3/11/12/37.

By Mr. Miles:

Q. Mr. Katz, I next hand you a tabular statement entitled "Statement of Net Operating Earnings adjusted to show the increase in operating expenses which would be experienced by Edison Light and Power Company if the present joint operating arrangement with affiliated companies with respect to service of officers and employees on a proportionate basis were not in effect and if the Edison Light and Power Company were charged the rental for property belonging to the York Railways Company which it now uses results for the year ended December 31, 1936", and ask you whether this adjusted statement was prepared by you personally? A. It was.

Q. Now, Mr. Katz, will you refer to the first line of this exhibit and tell me what the figure \$648,024 represents? A. It represents the net operating earnings as shown on line 31 of Company Exhibit No. 14.

Q. Was that the net operating earnings for the year ended December 31, 1936 that was mentioned on the preceding exhibit? A. Yes, sir.

Q. And then what is included within this figure of \$25,333? A. That is the amount shown by column 6 of Exhibit 12 and represents the summary of distribution of salaries and insurance of officers and employees of respondent to their jointly operated utilities on the basis of operating results for the year ended December 31, 1936.

Q. Well, did the respondent in the calendar year 1936 actually pay the sum of \$25,333 to the employees of the various departments referred to on the statement in front of you? A. The respondent actually paid those salaries and related insurance for those employees, yes, sir.

Q. What is your next item on the statement? A. From the \$25,333 I deducted the salaries of four employees, to which I

*David Katz—For Respondent—Direct*

previously testified in connection with Exhibit No. 12, amounting to \$4,740, leaving a balance of \$20,593.

Q. What is the next item? A. The next item is estimated rental for property belonging to the Railways Company and used by the Edison Light and Power Company as detailed in Company's Exhibit No. 10, as testified to this morning by Mr. Reed, in the amount of \$13,794.

Q. Did you say \$13,000? A. \$18,794. The combining of these two items totals \$39,387, and represents what in my opinion would be, that is, the opinion of myself and Mr. Reed, with respect to the item in Exhibit 10, and represents the amount which the Edison Light and Power Company would have to include in its operating expenses if it did not share with the other utilities the use of these facilities and personnel. The deduction of that amount, namely, \$39,387, from the net operating earnings as shown line 3 of Company Exhibit No. 14, amounting to \$648,024, leaves net operating earnings as adjusted amounting to \$608,637.

Mr. Miles: Your Honor, we offer in evidence the statement to which Mr. Katz has just referred, and ask that it be received and marked as Respondent's Exhibit No. 15.

Edison Light and Power Company statement of net operating earnings adjusted to show the increase in operating expenses which would be experienced by Edison Light and Power Company if the present joint operating agreement with affiliated companies with respect to services of officers and employees on a proportionate basis were not in effect and if the Edison Light and Power Company were charged a rental for property belonging to the York Railways Company which it now uses results for the year ended December 31, 1936, produced and marked Respondent's Exhibit No. 15, E. E. M., 3/11-12/37.

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Mr. Miller: We object to the exhibit insofar as the item of \$18,794 is concerned, that being derived from Exhibit No. 10 which was admitted over the Commission's objection this morning.

The Commissioner: I will overrule the objection for the same reasons as stated as to Exhibit No. 10, and admit Exhibit No. 15 to the record.

By Mr. Miles:

Q. Mr. Katz, I hand you a statement entitled, "Edison Light and Power Company estimated expenses in connection with Rate Case before the Public Service Commission of the Commonwealth of Pennsylvania Complaint Docket No. 11108-36," and ask you whether that statement was prepared by you? A. It was.

Q. Now, will you state the substance or in detail, if you desire, the exhibit consists of only five lines? A. The exhibit which I termed as estimated expenses in connection with rate case, is in fact for the most part actual expenses incurred up to March 1st of this year, plus an estimated allowance for services rendered, but not yet billed to date, covering engineering services and expenses, accounting services and expenses, legal services and expenses, and miscellaneous expenses, totaling \$86,000.

Q. And the exhibit is broken down as between the four classifications you have mentioned, namely, engineering, accounting, legal and miscellaneous? A. Yes, sir.

Q. As I understand it these expenses have either been actually paid or incurred but not paid? A. Yes, sir.

Edison Light and Power Company estimated expenses in connection with rate case before the Public Service Commission of the Commonwealth of Pennsylvania, Complaint Docket No. 11108-36, produced and



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marked Respondent's Exhibit No. 16, E. E. M., 3/11-12/37.

Mr. Miles: We offer in evidence, if Your Honor please, this exhibit.

The Commissioner: For what purpose?

Mr. Miles: We offer it in evidence on the theory that the law is well settled to the effect that the respondents in a rate investigation instituted by a regulatory body is entitled to an allowance for its necessary rate case expense, and which allowance we understand is generally amortized over some reasonable period of time.

Mr. Miller: No such allowance is made if the company is unable to sustain its rates, or if the complainant proves that the rates are unreasonable.

Mr. Miles: I am quite willing to argue the legal affect of that later, but I simply refer my brother to the Supreme Court's opinion in the West Ohio case, decided two years ago. It is a question of law.

The Commissioner: Exhibit No. 16 will be marked and received for the record, simply as a factual statement of the estimate of expenses in connection with this case, without any admission as to what should be done with these items in the setup of the company.

Mr. Miles: Do I understand by that statement that it is being received as evidence of the rate case expenses?

The Commissioner: Yes, but I say without any admission as to what should be done with the item of \$86,000 in accounting practice or in allowance at this time.

By Mr. Miles:

Q. Mr. Katz, we come to the last of your exhibits, I believe, which is entitled, "Determination of excess or deficiency of

*David Katz—For Respondent—Direct*

income of predecessor companies of the respondent based on a return of eight per cent applied to fixed capital and working capital investment." I ask you whether this statement was gotten up under your supervision? A. It was.

Q. Now, will you refer to the first sheet of this exhibit which relates to the People's Electric Light Company, and take the sheet up by columns, and tell us what is intended to be reflected?

Mr. Miles: Your Honor, I might say that this exhibit is offered by the respondent in connection with what is commonly referred to as lag, and in the light of the opinion of the Superior Court in the Chambersburg case.

The Witness: The determination on sheet 1 relates to the People's Electric Light Company. This company which was one of the early predecessors of the respondent started business in the year 1886, and it lost its corporate identity when it was first acquired by Edison Electric Light Company of York during the early part of the year 1894.

Column "A" of this exhibit or schedule shows the extent to which figures representative of the fixed capital investment by this company were available from the original books of accounts. It should be noted that the only available fixed capital investment figures obtained from the books of accounts concerning this company, was that which was obtained from an entry made on the books of a successor company, whereby the purported book value of this company's fixed capital was taken up on the books of that company incident to its acquisition. In the absence of figures representing this company's investment in fixed capital obtainable from original books of account, we discovered that periodical condensed balance sheet statements and net earnings were recorded in the minute books of that company. Those figures were used by us in this determination. The amount repre-

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sentative of fixed capital investment as recorded in the minute book at the end of the year 1889, and for each succeeding period, ending with September 30, 1893, are shown in the column "B", which we have designated as "Adjustments". In connection with the acquisition of plant and property by this company by the Edison Electric Light Company of York, this latter company as successor company recorded on its books an amount of \$66,666 as the purchase price for which this property was bought, which amount was \$7,429 in excess of the amount of fixed capital as shown by the last available balance sheet of People's Electric Light Company. We have accordingly eliminated this excess in the determination as shown on line 9 under column "B".

Column "C" represents fixed capital as adjusted on this basis of determination—

By Mr. Miles:

Q. The only adjustment that was made is the one you mentioned in connection with the 1894 transaction? A. Yes, sir.

Column "D" represents my estimate of the working capital which would ordinarily be required by this company in order to properly function.

Q. What is the basis of the estimate? A. The basis of this estimate is substantially equivalent to about two months of operating expenses.

Q. In other words, you ascertained from the available records the sum equivalent to two months of operating expenses experienced by the company for the particular year in question, and then adopted substantially that as its necessary working capital? A. Yes, sir.

Column 3 is simply the details of columns "C" and "D".

Q. Adjust fixed capital plus working capital? A. That is true.

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The amounts shown in column "F" represent the equivalent of eight per cent applied to the balance shown in column "E".

By the Commissioner:

Q. Why eight per cent? A. This, of course, is primarily an accounting computation made by me, but the per cent was arrived at after due deliberation by members of Day and Zimmerman. I believe that Mr. Seelye our Vice President will testify in that respect.

Mr. Miles: I might say, Mr. Commissioner, this exhibit is only offered in connection with the consideration of going value. Mr. Katz made certain accounting studies which Mr. Seelye will want to refer to when he is on the stand, and as I understand it Mr. Seelye is the sponsor of the eight per cent suggestion.

The Witness: That is correct.

Column "G" represents earnings before depreciation provisions.

Column "H" is an estimated allowance for annual depreciation provisions. That is, the provisions are on an annual basis. You notice that some of these periods cover more or less than a year. That was because of the fact that annual figures were not available from the statements which were at hand.

Column "I" represents estimated earnings after depreciation provision as shown in column "H" from the earnings shown before depreciation in column "G".

Column "J" is the result of comparing the amounts in column "I" with the amounts arrived at from the application of the eight per cent to the fixed capital, working capital, shown in column "F". The asterisks after the figures indicate that the earnings were less than the amount equivalent to an eight per cent return.

*(David Katz—For Respondent—Direct)*

Q. Now, I notice with respect to this particular company we were unable to find any data recording its operations in the years 1886, 1887 and 1888, or with respect to its kind of property for those years? A. That is true.

Q. But for the years November 30, 1889 to January 24, 1891, and from the last mentioned date to April 30, 1892, it was considerably under eight per cent return? A. That is correct.

Q. Now, how many companies are embodied within this exhibit, Mr. Katz? I don't think we need enumerate them all. A. There are five:

Q. Let us refer to the Merchants Company—

By the Commissioner:

Q. Let me ask you one question before you go to that. The next one, sheet 2, Westinghouse Electric Light, Heat and Power Company, no fixed capital recorded on the books apparently from 1892 to January 5, 1897, is that right? A. That is right.

Mr. Miles: But the minute books, Your Honor, of these companies—

The Commissioner: I quite understand. But the amounts given under adjustments in "B" for these five periods are taken from the minute book statements, is that right?

The Witness: That is right.

By the Commissioner:

Q. Now, then the adjusted fixed capital for the last of these five periods was \$43,448? A. Yes, sir.

Q. In 1898 you found, the very same year, you found fixed capital recorded on the books as \$28,829? A. That is right.

Q. Now, where did you get that adjustment of \$8,872 to bring that up to \$28,829? A. In the year 1899 when Westinghouse was acquired by Edison Electric Light Company of York, or the York Light, Heat and Power Company there was a re-

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valuation made at that time which decreased the fixed capital by an amount of \$31,202. Subsequently in 1908—

Q. Wait a minute. You just said 1898, didn't you? A. 1899.

Q. 1899. Now, you were referring to 1908? A. We are referring to a "contra" or a difference which was arrived at 'way back in the earlier period, and we assume—

Q. How do you justify that? A. Well, we assume that inasmuch as the write down only amounted to \$31,202, we assumed that in restoring that in 1908, that they should have restored \$31,202, or the same amount which was written down, but instead of that they used the figure of \$40,704.

Q. What I am trying to get through my normally thick head is what caused the reduction of fixed capital from \$43,488 in 1897 to \$28,829 in 1898? A. Well, the minute book showed a balance on its balance sheet for fixed capital of \$43,448.

By Mr. Miles:

Q. That is in 1897? A. In 1897.

By the Commissioner:

Q. January, 1897? A. And the first indication that we had of any books was in 1898 when it appeared as \$28,829.

Q. Then on the basis of the change in valuation in 1908 you raised that \$8,872 to bring that figure to \$37,701? A. That is right. We have attempted here, although it is quite sketchy, we have attempted to register this fixed capital on the basis of information that was available, and by the same process you will notice in 1900 we again reduced that amount by \$23,330.

Q. Bringing it back in 1902 to almost what it was in 1897? A. That is right.

Mr. Miles: I might say, Your Honor, while I confess I am just as vague as you are on my accounting, if you will look at the last column it happens to make no dif-



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ference because in 1898 the company was earning eight per cent on its capital.

The Commissioner: I was not even looking at that column. It just struck me as a curious fluctuation there.

The Witness: There was a writeup and a write-down and the writeup and writedown were at variance, and we have attempted here, although as I said rather sketchily, we have attempted here to show fixed capital as nearly as we possibly could with the available data in each of these years.

By Mr. Miles:

Q. All of these sheets in this exhibit have been developed in the same manner, have they not, Mr. Katz? A. Yes, of course. The Merchants, I believe, we found to be available entirely from the record of the Merchants Light, Heat and Power Company.

Q. I understand that, but before answering that, which I was going to develop in my next question, what I am getting at is the basis of your information with respect to all of these companies if either from existing books and records as could be found or its minute books, whatever corporate records were available to you? A. Whatever available records there were, statements or otherwise.

Q. Now, referring to the last three sheets in the exhibit, there have been comparatively few adjustments made with respect to those companies, have there not? A. What sheets are you referring to? The last three sheets?

Q. Sheets 3, 4 and 5? A. Yes, very few.

Q. There were no adjustments made with respect to the Edison Electric Light Company, is that right? A. That is right.

Q. And you obtained all of your fixed capital figures here direct from their records and books? A. All the figures actually came from the books, yes, sir.

Q. Now, with respect to the next company, the Red Lion

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Electric Light Company, it had no books at all, is that right?

A. That is right.

Q. And from what source did you get the information included with respect to that company? A. Why, that information came from the minute books which indicated that this property was sold at sheriff sale; the property was acquired at sheriff sale for the amount of \$8,000.

Q. Now, the largest company, I believe, in the group is the Merchants Electric Light, Heat and Power Company, as shown on sheet 5. What did you find as to the state of its records?

A. The records relating to the Merchants Light, Heat and Power Company were complete for the period covered by this exhibit.

Q. And according to sheet 5 it failed to earn eight per cent for nine consecutive years, is that right? A. That is correct.

Q. And the last column on each sheet denotes the amount over or under eight per cent that the particular company earned in relation to its fixed capital account, is that right? A. That is right.

By the Commissioner:

Q. By the way, that Merchants Company, what happened to that company in 1906? Look at that tabulation of earnings: 1904, \$10,640; 1905, \$12,834; 1906, \$1,367; 1907, \$14,504. Did they just stop doing business in 1906, or what was that, do you know? A. No, I am sorry I can't give you any explanation of it.

Q. It looks somewhat strange there, doesn't it? A. I imagine operating expenses probably fluctuated very widely in small companies of that sort, and there was no basis for equalizing expenses.

Q. Are the earnings after operating expenses and before depreciation? A. That is earnings before depreciation and after operating expenses.

*David Katz—For Respondent—Cross*

By Mr. Miles:

Q. It is the same thing each year, the same formula? A. The same formula.

By the Commissioner:

Q. There seems to be a terrible drop into the bottom of the well there? A. In those earlier days, of course, expenditures were recorded, I mean were charged to operating expenses as they paid them, and not as they provided them. It was not on a gradual basis the way they are done today.

Mr. Miles: Your Honor, we offer in evidence the exhibit the witness has just been discussing and ask that it be received and marked as Respondent's Exhibit No. 17.

Mr. Miller: No objection.

Edison Light and Power Company determination of excess or deficiency of income of predecessor companies of the respondent based on a return of eight per cent applied to fixed capital and working capital investments produced and marked Respondent's Exhibit No. 17, E. E. M., 3/11-12/37.

The Commissioner: Exhibit No. 17 will be admitted to the record.

Mr. Miles: That concludes the examination of Mr. Katz.

Mr. Miller: I would like to defer cross examination of Mr. Katz except for two questions with respect to exhibit No. 14.

*Cross Examination*

By Mr. Miller:

Q. Mr. Katz, can you give me the break down of the figures for local and state taxes on lines 23 and 24 of sheet No. 1? A.

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I can have a schedule prepared for you. I have not that with me.

Q. Will you do that? A. That is for local and state taxes?

Q. Yes, the break down of those amounts. A. In what form would you wish those?

Q. How they were calculated, showing what the taxes were and on what basis they were calculated? A. Yes, I see. All right. You want all the information from which that figure was arrived at.

Q. Yes, those figures, local and state? A. I will see that they are furnished to you.

Mr. Miller: That is all with Mr. Katz at this time.

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JOSEPH E. WAYNE, a witness called in behalf of the Respondent, being duly sworn, was examined and testified as follows on

*Direct Examination*

By Mr. Miles:

Q. Mr. Wayne, I hand you a booklet entitled, "First Mortgage York Company to Guaranty Trust and Safe Deposit Company of Philadelphia dated December 2, 1907, securing \$10,000, thirty year five per cent gold bonds, and the mortgage supplemental thereto dated November 30, 1931," all contained in one volume, and ask you whether that is a copy of the mortgage under which the presently outstanding bonds of York Railways Company were authenticated, delivered and sold?

Mr. Miller: What is the purpose of the question, Mr. Miles?

Mr. Miles: The purpose of the question is to have in evidence the security and collateral back of the bonds of

*Joseph E. Wayne—For Respondent—Direct*

the York Railways Company, including all of the outstanding stock of the Edison Light and Power Company.

Mr. Miller: Objected to as irrelevant and immaterial in this proceeding.

The Commissioner: I will sustain the objection and note an exception for the respondent.

Mr. Miles: May I make an offer of proof on the record?

The Commissioner: Certainly.

Mr. Miles: If Your Honor please, the respondent offers to prove that on December 2, 1907, York Railways Company entered into a mortgage trust indenture with the Guaranty Trust and Safe Deposit Company of Philadelphia, Tradesman's National Bank and Trust Company as Trustee, and thereafter put entirely in the supplemental indenture with the trustee dated November 30, 1931, and that there was hypothecated and pledged as principal collateral security for the payment of bonds authenticated and issued under these indentures all of the common stock of the Edison Light and Power Company and a note of a \$1,066,000 of the Edison Light and Power Company, and that there is now outstanding and maturing on December 2, 1937, approximately \$6,116,000 principal amount of bonds.

Mr. Miller: Objected to, Mr. Commissioner, as wholly irrelevant and immaterial to the determination of the reasonableness of rates published by the respondent company.

The Commissioner: Objection sustained; note an exception for the respondent.

By Mr. Miles:

Q. Mr. Wayne, are you the President of the Edison Light and Power Company and of the York Railways Company? A. Yes, sir.

*Joseph E. Wayne—For Respondent—Direct*

Q. And are you President of York Steam Heat Company and York Bus Company? A. I am.

Q. Are you familiar generally speaking with the operations and revenues of each of these four companies? A. I am.

Q. Are you familiar with the operating results of each of these four companies for the year 1936? A. Yes, sir.

Q. Will you state what is the gross income required in order to continue the operations of Edison Light and Power Company and its three affiliates as operated during the year 1936, assuming the indebtedness in the hands of the public remains the same?

Mr. Miller: Objected to as irrelevant in this proceeding.

The Commissioner: I will sustain the objection and note an exception to the respondent.

Mr. Miles: Will Your Honor permit me to propound six questions, all of which I assume will be objected to, and then I will make an offer?

The Commissioner: Let the questions be asked without an answer from the witness. It will save going through the same thing six times.

Mr. Miles: Following that I will make an offer.

By Mr. Miles:

Q. Mr. Wayne, how much was earned in 1936 resulting from the operations of the York Railways Company?

Mr. Miller: The same objection.

The Commissioner: The same ruling and the same exception.

By Mr. Miles:

Q. How much was earned in the year 1936 from the operations of the York Steam Heat Company?



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Mr. Miller: Objected to.

The Commissioner: The same ruling and the same exception.

By Mr. Miles:

Q. How much was earned in the year 1936 from the operations of the Edison Light and Power Company approximately?

A. \$647,000.

The Commissioner: That is on the basis of the tabulation shown in Exhibit No. 14, \$648,024.

Mr. Miles: As reported by the Company.

The Witness: As reported by the Company.

By the Commissioner:

Q. This is the exhibit that was presented by the witness for your Company? A. It is comparable with that figure, yes.

By Mr. Miles:

Q. Mr. Wayne, can you state how much the revenue of the Edison Light and Power Company could be reduced and leave sufficient combined income from the four companies to continue the operations of the four companies as operated during the year 1936, and paying interest on the bonds held by the public?

Mr. Miller: Objected to.

The Commissioner: Objection sustained; note an exception.

By Mr. Miles:

Q. Now, will you state, Mr. Wayne, if you can, what would be the effect upon the rate structure of the Edison Light and Power Company if its revenues were to be reduced by the sum of \$250,000 per annum? A. The rate structure which would be placed in effect by the Edison Light and Power Company involving a reduction of approximately \$250,000 per annum, if

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placed into effect, the residential lighting rates and commercial rates in York and vicinity would be lower than any probably in the state of Pennsylvania.

Q. I would like to ask you whether the Edison Light and Power Company has offered to reduce its revenues by the sum of \$250,000? A. The Edison Light and Power Company has offered to reduce its rates in the amount of \$250,000 annually.

Q. And that offer was refused by the Commission? A. Yes, sir.

By the Commissioner:

Q. For what reason, Mr. Wayne? Since we are opening up the question of what happened in informal conference with the Commission let us open it up wide, and see why it was refused. Why was that refused? A. There was no reason given to me, Your Honor, except through the statement of the chairman that the offer of \$250,000 was refused.

Q. You know perfectly well why it was refused, don't you, Mr. Wayne? You know the position the Commission took in the matter of the suggested reduction in the proceeding which was initiated by the Commission; you know what the position of the Commission was, don't you, in the conference? A. As to the reduction?

Q. Were you not told that the Commission felt that the reduction that should be made here should be at least \$450,000—I mean not you, but your Company? A. I believe that figure was mentioned at a conference.

Q. It was stated definitely that that was the Commission's position, isn't that so? A. My recollection was either \$400,000 or \$450,000.

Q. And the Company's offer of a lower amount of \$250,000 was refused, and the \$250,000 offer was refused on the ground that the Commission felt that it was not sufficiently near the amount that the Commission felt the rates should be reduced

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to justify the Commission in accepting it in lieu of a rate case, isn't that so in essence? A. I presume that was the Commission's reason. Those are not the exact words given to me.

Q. They are not the exact words, but that is the essence of it? A. I presume that is the reason the Commission turned it down.

Mr. Miles: We are quite willing to accept Your Honor's statement of whatever the reason was.

The Commissioner: That was the reason.

By Mr. Miles:

Q. The fact remains the offer was refused, wasn't it? A. The offer was refused.

The Commissioner: It certainly was, and the statement for the purpose of this record that it produced lower rates than any place in Pennsylvania, I think we shall go into that a little further as the case goes on, but that has nothing to do with the fact that if you reduce your rates below those of any places in Pennsylvania anywhere, and still earn a larger amount than you should, you should reduce them still further.

Mr. Miles: That is a question of law.

The Commissioner: You are putting inferences in this record, Mr. Miles, and I don't know on what basis the witness makes the statement that the rates would be lower than any place in Pennsylvania. There is nothing in the record to substantiate that.

Mr. Miles: I asked him to testify what in his opinion would be the effect of the reduction, and he has stated his opinion of what the effect of that reduction would be.

The Commissioner: I would like to have him produce something on that line in evidence.

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Mr. Miles: Now, if Your Honor please, we offer to prove the following facts through this witness:

First, that the gross income required in order to permit continuance of the Edison Light and Power Company and its three affiliates as operated in 1936, assuming the indebtedness in the hands of the public to remain the same, would be \$430,000.

The Commissioner: Now, Mr. Miles, isn't that the same offer, the same matter on which you asked the witness questions and which was objected to?

Mr. Miles: Certainly. I am making an offer of what we would prove by it, in order that the record may be clear. I am quite frank about it.

The Commissioner: All right, go ahead.

Mr. Miles: Second, that the 1936 operations of the York Railways Company resulted in a net operating loss of \$425,000;

Third, that the operations of the York Steam Heat Company in the year 1936 produced a net operating income of \$33,000;

Fourth, that the net earnings of Edison Light and Power Company in 1936 were \$648,000;

Fifth, that the revenues of the Edison Light and Power Company could be reduced by the sum of \$250,000, and leave an amount sufficient to continue the operations of the four companies as operated in the year 1936;

Sixth, that the Edison Light and Power Company offered a reduction of \$250,000 in its revenues, feeling that any further offer would destroy the York companies.

Finally that the Commission, for reasons which have been stated in this record presumably by the Commissioner, refused that offer.

That is the offer of proof we make in the case.

The Commissioner: I don't think that is quite an exact statement, No. 4 and No. 6, namely, that the Edison

*Joseph E. Wayne—For Respondent—Direct*

Light and Power Company earned \$648,000, and No. 6, that the Edison Light and Power Company offered a reduction of \$250,000 in consideration of the Commission's dropping this proceeding, as admitted by the Commission. The \$648,000 statement is corroborated by an exhibit as to what a previous witness for the Company has testified, and that exhibit is in the record.

Mr. Miles: Your Honor, how are my statements incorrect?

The Commissioner: I thought you said that you offered to prove these various things, seven items altogether, and that the Commission had ruled against them. They didn't in those two cases.

Mr. Miller: We don't object to the fourth, sixth and seventh points.

Mr. Miles: I am simply trying here to make an offer of proof in the protection of my client, and for no other reason.

The Commissioner: I quite understand that.

Mr. Miles: We offer to show those facts.

The Commissioner: You are absolutely correct. You listed them numerically, and as to one, two, three, five and seven the Commission ruled that it would not sustain objections to presentation of evidence, as to four and six. I am trying to point out that the Commission did not refuse to admit evidence as to any earnings of the Edison Light and Power Company and it admits that the Edison Light and Power Company did make an offer of reduction of \$250,000, which the Commission refused for the purpose as stated. Subject to that correction you are exactly right.

Mr. Miles: Thank you, sir.

Mr. Miller: I believe you said that the seventh point of Mr. Miles would be refused. I make no objection



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to that, I believe it was his reference to your statement of the Commission's reason for the refusal of that offer.

The Commissioner: Perhaps I counted wrong. I think Mr. Miller probably is correct, there were only six specific items that you mentioned.

Mr. Miles: That is correct.

The Commissioner: I think there was a general resume, and the seventh would have been a general resume.

Mr. Miles: I was about to mention that the Company had offered to reduce its rates, and that a reduction of \$250,000 would in its opinion produce as low a rate structure as there was in the state of Pennsylvania.

Mr. Miller: Mr. Wayne has already answered that.

By the Commissioner:

Q. I would like to ask Mr. Wayne a question in connection with that \$250,000 offer which in his opinion would produce the lowest rates in Pennsylvania if it were put into effect. Do you think a regulatory body can approve or disapprove rates on the basis of comparison with other rates or on a basis of what that rate means as to earnings?

Mr. Miles: I am compelled to object to that question. I think that is a question of law, and I think it is one of the most vital matters in this case.

The Commissioner: I think when you go into a case like this, without any corroborating evidence of such an assumption by this witness, there is nothing in this record will bear that out, there is nothing before us as to this suggested rate offer.

Mr. Miles: It was objected to.

The Commissioner: I beg your pardon. That was not objected to.

Mr. Miles: You mean you will permit us to offer

*Joseph E. Wayne—For Respondent—Direct*

proof as to what would result from the \$250,000 reduction?

The Commissioner: I certainly would like to hear that proof. What the evidence as to any inter-relation of other companies has to do with the fact of whether or not a new rate structure offered by the Edison Light and Power Company gives the Electric Company users, consumers of the Edison Light and Power Company a lower or higher rate than anywhere else in Pennsylvania I fail to see.

Mr. Miles: I don't argue that. I do argue this, with the greatest deference to Your Honor, repeating our position throughout this case that under the circumstances peculiar to this situation, which have been made clear on this record, that there are legal authorities for the proposition that a rate of return should be allowed this company sufficient to prevent an absolute destruction of the Railway Company, and a six per cent rate of return will destroy that Railway Company, and that is a task which this Company is not going to undertake, unless compelled to do it by the Commission. Now, where the question of rates comes in, as we understand it, is this: If we were asking this Commission to permit a rate or return which would result in burdensome rates to the electric consumers than as we conceded our position would not be good, but if we can couple with that request and show that it would produce no burdensome rates, but the lowest rates in the state of Pennsylvania, we think it makes a marked legal difference in the conclusion of the Commission.

The Commissioner: I said if you have some corroboration of the fact that a reduction of \$250,000 will give the consumers of this Company the lowest rates in Pennsylvania, and that statement has been made on the record, I would like some substantiating evidence.

*Joseph E. Wayne—For Respondent—Cross*

Mr. Miles: All right, sir, we will attempt to substantiate it by the production of rates and the comparison with other companies.

The Commissioner: I think the ruling is clear as to the other offers you made, as to one, two, three and five.

by Mr. Miles:

Q. Now, Mr. Wayne, I hand you a copy of an exhibit which has been filed in evidence in this case, showing the allocation of payrolls between the York Railways Company and its affiliates, and ask you whether you examined that exhibit before its presentation? A. I did, yes.

Q. Now, does the exhibit accurately allocate the payment of salaries between various companies and the payment of insurance premiums expressed in both dollars and percentages? A. It does, yes, sir.

Q. Have you consulted with Mr. Katz as to how many of the employees that are now devoting their time to the joint operations of the Company could be dispensed with if the Edison Light and Power Company was divorced from its affiliations? A. I have, yes, sir.

Q. Did you hear his testimony with respect to the four employees that he mentioned? A. I did.

Q. Will you state whether or not his statement coincides with your views which I believe you have already testified you discussed with him? A. It does.

Q. Do you believe that any of the other employees or officers could properly be expected to accept any reduction in salaries if this company was divorced from its affiliates? A. No, sir, I don't.

*Cross Examination*

by Mr. Miller:

Q. Mr. Wayne, do you believe that a man who is managing one company is worth as much as a man who manages

five companies of different kinds and of different sizes? A. That depends entirely on the conditions. In my estimation the department heads and executives of any company are paid for their knowledge of the business, their efficiency in the management of the particular companies they operate. As to the second point, that has nothing to do with the compensation they receive. In times gone by when we took on additional companies the officers and department heads received no increase in salary; they simply assumed the additional duties at the same compensation.

Q. Then you would say that the executive or officer in charge of the operation of the Edison Light and Power Company should receive no additional compensation if he were also called upon to manage York Railways Company? A. I would say that would be entirely a managerial question as between the President and Directors of the company, just how it is to be handled.

Q. I am asking you your opinion.

(Last question read.)

A. The Edison Company officers don't receive any additional compensation for handling the affairs of the York Railways Company.

Q. Well, I take it that the present administrative officers—I believe you are President of both York Railways and the Edison Light and Power Company? A. That is correct.

Q. Now, suppose that you were President and executive officer only of the Edison Light and Power Company, and that you were called upon—and were managing only the Edison Light and Power Company—and you were called upon to take on in addition to that the management of the York Railways Company, would you not feel—

The Commissioner: Mr. Miller, I think that is an unfair question. Mr. Wayne has been, I take it, or some predecessor of his has been, President and General Man-

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ager of these two companies for a long time. There has not been any separation of these companies involved for a long time, has there, Mr. Wayne?

The Witness: I have been with the York Railways Company and affiliated companies for thirty years, and they have never been separated as to management.

The Commissioner: So there has never been a time since Mr. Wayne was President and General Manager, or that he was not President and General Manager of both, is that correct?

The Witness: Yes. -

The Commissioner: Therefore, an assumption that he was President and General Manager of Edison Light and Power Company and then was asked to take over York Railways Company, I don't think is a fair question.

By Mr. Miller:

Q. All right, Mr. Wayne, suppose York Railways Company and Edison Light and Power Company were divorced and you were called upon to manage only York Railways Company, would you feel a reduction in your salary would be fair? A. I think that is an unfair question.

Q. I don't. I think it is a perfectly proper question. A. I don't see why I should be asked to say what I would expect if I was called upon to manage York Railways Company alone.

Q. Now, you are testifying that if York Railways Company were divorced from Edison Light and Power Company you would not think a reduction in salary—you don't think that would be fair? A. For the same reason we took over the Glen Rock Electric Light, Heat and Power Company when we took over a number of other electric companies—

By the Commissioner:

Q. The fact of the matter is that essentially the majority of your service is devoted and has been to Edison Light and Power Company; isn't that so? A. That is correct.

*Joseph E. Wayne—For Respondent—Cross*

Q. And if we assume that the chart is correct— A. Well, it is.

Q. Over three-fourths of your time is marked on these sheets for Edison Light and Power Company, is that correct? A. That is correct.

The Commissioner: I am sorry, Mr. Miller, but it seems to me that the only proper way to approach that whole question is whether or not if one of these or all of these affiliates were divorced from Edison Light and Power Company, which is top dog in the picture, so to speak, it is not reasonable to presume that Mr. Wayne would of his own volition, at least, or any present management in this setup would choose to leave the Edison Light and Power Company to become head of only one of the underfactors in this situation. Edison Light and Power Company is the top in the setup, whether it is comparable in size and importance from Mr. Wayne's angle—I think your question as to whether he thinks it would be proper to reduce the salaries of himself and other administrative officers, if all the others or one of the others were divorced from Edison Light and Power Company, is not proper, and I think Mr. Wayne did answer that.

By the Commissioner:

Q. Did you not, Mr. Wayne? A. I think I did.

The Commissioner: That was the first question you asked him.

By Mr. Miller:

Q. Now, let me ask you, Mr. Wayne, this question whether you think that the services you render to the Glen Rock Electric Company are worth anything in addition to the services you



*Joseph E. Wayne—For Respondent—Cross*

render to the Edison Light and Power Company. A. Read that question.

(Last question read)

A. I would say that my services rendered to the Glen Rock Electric Light and Power Company are worth something to the Glen Rock Electric Light and Power Company and should be recognized in my total compensation.

Q. Shall I assume your answer would be the same to a similar question as to the York Railways Company? A. That is right.

Mr. Miles: He certainly is not going to admit that his services are worthless to anybody, I take it.

Mr. Miller: I hope not.

By Mr. Miles:

Q. Mr. Wayne, if the Edison Light and Power and York Railways were to be divorced by some process will you state whether or not the Edison Light and Power Company would require the use of all of the office facilities, the Market Street offices, that are now, I believe, used to some extent jointly by both companies? A. If the employees of the York Railways Company and the Bus Company and the Steam Heat Company could be taken out of the main office at 27 West Market Street, Edison Light and Power Company would still keep the entire building.

Q. Is it not a fact that the building is quite congested? A. The building is congested.

Q. Is the Edison Light and Power Company leasing additional space because of that condition? A. Yes, sir.

Q. Is the space which it leases less or more than the space which the other companies occupy? A. The additional space which is leased by the Edison Light and Power Company represents a larger area than that which is occupied in the main building that is the company's.

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Mr. Miles: We have only one other witness, Your Honor, but that will take some little time.

The Commissioner: We will adjourn until nine thirty o'clock tomorrow morning.

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Friday Morning, 9:30 o'clock, March 12, 1937.

CLARENCE A. MITCHELL, recalled.

*Direct Examination*

By Mr. Miles:

Q. Mr. Mitchell, I hand you a copy of Respondent's Exhibit No. 10, which has been admitted in evidence in this case, and which is an analysis of property used by the respondent owned by the York Railways Company. Will you refer to the second item of that exhibit relating to a right of way between Smyser's and Gitt's Run sub-station and state the expense if any, to which the York Railways Company and the respondent makes use of that right of way? A. That particular right of way is owned by the York Railways Company and used by the York Railways Company tracks and their feeder wires, and is also used by the Edison Light and Power Company for their transmission lines, and by the Metropolitan Edison Company for their transmission lines. The transmission lines of the Edison Light and Power Company are used jointly by the Railways Company for their feeders and the Edison Light and Power Company transmission conductors. The Metropolitan Edison Company transmission line is used solely by the Metropolitan Edison Company circuits.

Q. Now, does the use by any one of these three companies in any manner interfere with or impair the use of the other two for their respective purposes? A. No, sir, they don't interfere with the use of the other companies. As a matter of fact the

*Clarence A. Mitchell—For Respondent—Direct.*

poles lines of the Edison Light and Power Company and the York Railways Company and vice versa, the York Railways Company have poles on which the Edison Light and Power Company circuits are attached.

Q. Now, will you refer to the third item on the same Respondent's Exhibit No. 10, which has to do with the right of way between Violet Hill sub-station and Dallastown and tell us the extent to which that property is jointly used by the respondent and any one or more of the other companies? A. That property is used jointly by the York Railways Company and the Edison Light and Power Company. The York Railways Company has their tracks and feeder circuits. The Edison Light and Power Company have their transmission circuits on the same poles which are used jointly by the York Railways Company and the Edison Light and Power Company. In addition to that the York Railways Company has several stations, small stations on the route of the track right of way.

Q. Is there any interfering or conflict of use in that instance? A. No, sir, there is no interference. The two companies use the pole facilities for their circuits, the poles belonging to the Railways Company and the Edison Company.

Q. Now, will you refer to the first item on the exhibit which is described as poles on right of way between Violet Hill sub-station and Dallastown and tell us whether there is any joint use of those poles? A. Those poles on that particular right of way are owned by the Railways Company and are used jointly by the Railways and the Edison Companies.

Q. To what extent are they jointly used? A. Well, Edison Light and Power Company carries their transmission feeder, thirteen thousand volt circuit on these poles, and the same poles support the trolley feeders and the span wires for the Railways Company.

Q. Now, what about Item 6, described as poles on right of way between Smyser's and Gitt's Run sub-station? A. Those

*Clarence A. Mitchell—For Respondent—Direct*

poles are used in the same manner as the Red Lion-Violet Hill circuit, that is, the poles carry the Railways Company circuits and the span wires, and the Edison Light and Power transmission wires.

Q. Now, the last item I believe which involves any joint use is described in item 7 of the exhibit as trolley poles in York and various boroughs. What is the nature of that joint use?

A. The nature of that joint use is to carry the Edison Light and Power Company's distribution feeders, and street light circuits, and also the trolley feeders for the Railways Company and their span wire attachment.

Q. Mr. Mitchell, you have personally in this case investigated that part of the property of the respondent in particular that relates to these poles and distribution and transmission systems, have you not? A. Yes, sir.

Q. You are familiar with its depreciation and maintenance, and also with respect to that particular character of property? A. Yes, sir.

Q. Will you tell me what you would estimate as the percentage to be applied annually to the character of property described in items 4, 5, 6 and 7 of Respondent's Exhibit No. 10?

A. Item No. 4 would be a little different percentage than items 5, 6 and 7. Item No. 4 which deals with the conductors only, which is a common conductor, the annual depreciation and maintenance for that item would be between three and four percent.

Q. And what would be the annual percentage of depreciation for items 5, 6, and 7 on the exhibit? A. The annual charge for depreciation for items 5, 6 and 7 would be between five and six percent annually.

Q. Which would be applied against the cost or value of the property as carried on the Respondent's books, is that right? A. Yes, sir.

Mr. Miller: I would like to defer cross examination except for one question.

*Clarence A. Mitchell—For Respondent—Cross—Redirec*

*Cross Examination*

By Mr. Miller:

Q. Mr. Mitchell, do you know how much the Metropolitan Edison Company pays for the privilege of using the right of way or poles mentioned on line 2 of the exhibit? A. The Metropolitan Edison Company as I understand does not pay any rental for the use of those poles.

*Re-Direct Examination*

By Mr. Miles:

Q. Do you know of any corporate relationship between Metropolitan Edison Company and the Edison Light and Power Company? A. I know the purpose of that transmission line is to feed the customer of the Edison Light and Power Company.

Q. First answer the question, you don't know? A. No, sir.

Q. Now, tell us what you do know about the purposes of that particular transmission line? A. I know that at the present time the Metropolitan Edison Company don't pay any rental for those poles, but I believe there is an agreement that in case this customer is abandoned why the rental of \$2.00 a pole would be applied to the poles of Metropolitan Edison Company.

Q. Is that transmission line used for serving a customer of the Edison Light and Power Company? A. Yes.

Q. Then do you know the name of the customer? A. Gladtfelters Mills, I believe.

By the Commissioner:

Q. Paper Mills? A. Paper mills, yes.

Q. Spring Grove? A. Yes, sir.

Mr. Miller: Do I understand, that it is the Metropolitan Edison Company that uses the poles for trans-

*Clarence A. Mitchell—For Respondent—Redirect*

mission of current to Gladtfelters, or is it Edison Light and Power Company?

The Commissioner: Both.

By Mr. Miller:

Q. Do both companies serve Gladtfelters? A. Yes, sir.

The Commissioner: I don't think that is correct.

By the Commissioner:

Q. Are there any facilities of the York Railways Company or Edison Light and Power Company and the Metropolitan Edison Company on this right of way? A. Yes, sir.

Q. All three? A. Yes, sir.

Q. And the facility of the Metropolitan Edison Company is a transmission line that runs to the Gladtfelter Mills at Spring Grove, is that right? A. Yes, sir.

Q. But there is in addition to that a facility of the Edison Light and Power Company and in addition to that a transmission line of the Metropolitan Edison Company, is there not? A. Yes, sir.

By Mr. Miller:

Q. Now, are there three pole lines on the right of way? A. There are two pole lines on the right of way.

Q. One is the Metropolitan Edison Company pole line, exclusively, is that right? A. Yes, sir.

Q. And the other is used jointly by York Railways and the Edison Light and Power Company? A. Yes, sir.



*Theodore E. Seelye—For Respondent—Direct*

T. E. SEELYE, recalled.

*Direct Examination*

By Mr. Miller:

Q. Mr. Seelye, I believe with further study of Respondent's Exhibit No. 9 relating to the original cost of this property you and your colleagues discovered an error which you decide to have corrected in the record. Will you please state what the error is and the correction you desire to make? A. I would say in my statement rather than in the exhibit. In response to a question by counsel for the Commission I informed him that the original cost estimate submitted did not include the rotary converter in the central plant, which is property of the York Railways Company, and the transmission line which also is property of the York Railways Company. I found on leaving the stand that that had been included and the inventory excluded all of the assets of the Edison Light and Power Company. The correction will be approximately \$45,000, but I cannot give you the exact figure until we make sure that all the items have been accounted for.

By the Commissioner:

Q. That is \$45,000— A. Less.

Q. Of property owned by the York Railways Company? A. That is right.

Q. But used entirely by the Edison Light and Power Company, is that correct, that is, included in this original cost of Edison Light and Power Company? A. That is correct. The correct total would be \$4,969,000 instead of \$5,014,900, and I shall state that that figure we will properly include in the summary to make these adjustments so that we will have the correct figures at the next hearing.

Statement of George W. Thompson, Esq.

to Mr. Allen:

Q. That is the same time as that of January that is a  
 turned in at the 2 of Thompson's Business Co. 187 & 188  
 at that is correct.

Q. Mr. George, I believe in getting an estimate on a job  
 your experience in connection with public utilities you stated  
 that you had had some considerable experience in the running  
 of such utilities, did you not? A. Yes, sir.

Q. I believe it has also been previously stated by you that  
 you were in charge of the entire management in this case? A.  
 Yes, sir.

Q. Now, will you state whether you have given consideration  
 to what you regard as a necessary allowance for working  
 capital? A. Yes, sir.

Q. In the estimate the respondent. What is your estimate?  
 A. I don't think that a working capital is actually a matter of  
 compensation as resulting in some sort of definite which  
 can be properly designated as working capital. I think working  
 capital is largely a matter of business judgment, and with the  
 and character of the enterprise and in connection with the  
 purchase of your compensation should be made the basis of the  
 working capital which I think that company should have, and  
 one and a half months of operating expenses plus material  
 and supplies, which in this instance were on hand, December  
 18, and the compensation on that basis estimated \$175,000. In  
 line with my previous statement, however, that there are some  
 sort of judgment, I think that this company should have a work-  
 ing capital of \$175,000.

Q. Which is about \$175,000 less than the total made up of a  
 month and a half operating expenses and the material and  
 supplies as indicated by the balance sheet position as of Decem-  
 ber 18, 1906? A. Yes, sir.

*Question: E. Dodge—For Inspection—Answer*

Q. Now, have you any opinion or judgment as to whether the corporation in this case, as you stated it, is entitled to any discount for what is generally considered as going concern value? A. Yes, sir.

Q. And what is your opinion relative to the propriety of awarding it a discount? A. In my consideration of the matter of going value of the South Boston Company, and a number of other similar matters which are raised not only as going value, but also as the fair value of the property, measured as the market value and an independent valuing one to the other. That it is not the property of all the low going value has a low fair value, and on the other side, if it had a high going value it has a high fair value in comparison with the actual investment in physical property, so that these items which I have in mind here are properly related as both of these factors. I think that one of the important factors in the situation is the character of the territory which this company covers. It is highly industrialized, and it is industrialized with a wide diversity of business. It has a unique experience, I believe, in that the city of South, at any rate had no least failure during the recent depression. This is indicative of the character of the population, their well-being, and the ability of the territory to carry on under adverse circumstances, all of which raises very much the value of the property. Furthermore, the value of this company could be, according to the testimony which has been submitted, low in comparison with value in general, and the company can still earn a reasonable return under those circumstances. I think that that is a very important element in the value of any property, the fact that it can earn a reasonable return under present conditions. The efficiency of the management is as true as that it is of great importance, both to the company and to the public, and the condition of the property and character of the service. These things are related to each other. Obviously the condition of the property and character

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of the service is a reflection of the efficiency of the management, and I think that those things are of importance both to the consumers, to the company and to the stockholders. Another advantage which this company possesses due to fortuitous circumstances, but nevertheless possesses, is an available power supply, in satisfactory quantity from different sources. It has several large companies near to it from which it can purchase power, and it is now purchasing power at excellent rates. Another item of importance, and very important to the public is the capital structure of the company. The company has a low capitalization, it has no funded debt. It has outstanding in lieu of funded debt \$1,066,000 of notes, and quite obviously if those were changed to funded debt, the funded debt ratio would be very low indeed for a company of that size, and it has ample resources, therefore, to carry on its activities, and to meet the development of the territory.

The Superior Court in the Chambersburg Gas case pointed to the importance of the matter of lag in earnings, or otherwise the cost of obtaining business, as indicated by lag in earnings, as an important factor to be considered in the matter of determining going value. The particular circumstances of this company, made up of many constituent original companies go back to a time when accounting procedure was at least by comparison with present methods primitive in a business which was new to the people who were engaged in it, and therefore accounting methods had not been crystalized to take care of that particular kind of business. It, therefore, becomes difficult to determine the early lag in earnings. The problem is further complicated by the fact that it is a new business. For example, in the case of a water company, water companies have been in existence for centuries. When a new water company starts business there is a definite matter of obtaining business which is there, because people will always and always have been using water, but electricity at the time of these companies in the early days was a new thing, which very few used, or

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even thought they would ever use. It was considered first of all a matter of street lighting. Subsequently merely house lighting, and subsequently a multitude of uses. Therefore, the problem of building up business was an entirely different matter than what confronts any electric company today, or any other type of company.

These studies which Mr. Katz submitted were based on the use of eight percent return on fixed capital which could be determined from the books available of these companies in those early days. The eight percent return which he used was at my suggestion, and I think that probably it is on the low side. I say this very seriously, because only up to a few years ago this Commission allowed a seven percent return on utility properties, even in the advanced day when we knew what the business meant. The California Commission only recently dropped from eight percent to seven percent, and there have been many eight percent returns allowed by Commissions even since the days of regulation. These new companies started in business fifty years ago, just about, started into a strange field obviously through expectation that earnings would have to be in excess of eight percent to justify the pioneering which they were attempting to do, so I think that eight percent return which has been used as a basis for this computation is perfectly reasonable. Eight percent is a reasonable return, and it indicates for those companies, for which we have a complete record of property from the beginning a lag up to nine or ten years. To apply this directly to the present property of the Edison Light and Power Company becomes entirely a theoretical proposition, and I don't think it can be done in any specific computation that would mean anything.

Q. You mean by that, as I understand it, that you have to consider the lag in earnings, but you are not prepared to advise an application of whatever the percent of lag may be to the existing property of a given company? A. That is right.

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In accordance with the Superior Court's opinion, however, it is an indication of the existence of going value, and I think under the circumstances that is the maximum use which could be made of determination of lag in a completely changed business over the period of fifty years in the history of these companies. I think Mr. Reed early in the testimony submitted by the company testified with respect to the historical development of the company's property, the growth of the various companies and the equipment and property which they had installed from time to time as the properties were built up.

Q. Now, have you enumerated the only factors and considerations which enter into your judgment as to the allowance for going value in this case? A. Yes, sir, I have. I think that all of these matters are evidence of the existence of going value in this property, and it is my opinion, based on experience, which includes not only the operation of utility properties, experience in considering these matters in connection with rate litigation, but also in connection with the acquisition and sale of public utility properties, that this company has a going value of certainly not less than \$400,000. That figure is not a percentage of any figure, it's a sum of dollars.

Q. And it is an expression of a judgment based on your own experience with particular relationship to the various factors that you have suggested exist in this case? A. Yes, sir.

Mr. Miles: Now, Your Honor, I don't know what the practice before this Commission is as to the propriety of opinion evidence regarding fair value and rate of return. I rather assume, in view of certain questions propounded by Your Honor, in the very first day of the hearings in this case, when it was not my privilege to be here, that you had sought some suggestions from the respondent as to what it regards, or what its claim is for a rate base. If that is true, it necessarily involves opinion evidence as to fair value.



*Theodore E. Seelye—For Respondent—Direct*

The Commissioner: Certainly.

By the Commissioner:

Q. Mr. Seelye, this calculation based on a return of eight percent that was presented in Exhibit 17, that was at your direction, or with your knowledge? A. Yes.

Q. I admit I am not a Certified Public Accountant, and perhaps I don't understand these figures. Will you refer to sheet 1 of that exhibit in relation to the Peoples Electric Light Company? A. Yes, sir.

Q. I am curious as to how you calculate. As I understand it, "Fixed capital as recorded on the books," where there was any recorded on the books, next, "Adjustments" where there was no fixed capital recorded on the books, where anything could be found in the minute book, it was put in under that column? A. Yes.

Q. Then the "Adjusted fixed capital," then the, "Estimated working capital," and in column "E" adding together the adjusted fixed capital and the estimated working capital, that is correct, isn't it? A. That is right.

Q. Now, on what is the eight per cent applied, column "E"? A. Column "E".

Q. If the eight per cent is applied to column "E" I don't understand why the eight per cent on \$53,000 and \$55,000 should be \$5,000 in one case, \$5,500 in another case, and in another case on \$55,000, \$1,847? A. The reason for that, sir, is the fact that taken from the minute books there were no uniform periods of time. It is a question of dates. In the case of the \$1,847 it was only from April 30 to September 30.

Q. All right. A. That is part of the year, not a whole year.

Q. And the \$5,000 is for more than a year, and the \$5,500 is for more than a year? A. Yes, that is right.

The Commissioner: That is the explanation. All right.

*Theodore E. Seelye—For Respondent—Direct*

The Witness: I might say that I did attempt from this data to make a computation which might be illuminating for the purpose of determining lag on the existing property of the Edison Light and Power Company, basing that on a lower rate of return and using the average number of years, the lag as revealed by those computations, where they did reveal it, produced rather fantastic figures for going value, which were far beyond what I consider this company possesses in that respect. For that reason I don't think a determination of going value even under the conclusion of the Superior Court can be made.

By The Commissioner:

Q. This is true, Mr. Seelye, as to fixed capital in these early years, both in the Commission's exhibits or in your exhibits and the opinion of the company, there is a certain amount of judgment involved, the records are too haphazard or hazy to determine an exact figure either in the Commission's exhibits or yours? A. I don't think that is true of all of the companies.

Q. No, I don't say that, I say in some cases. A. Yes, I think that the ones which have any significance are the larger companies, that is, the Edison Light and Power Company on sheet 5 and the Edison Electric Light Company on Sheet 3.

Mr. Miles: I think what the Commissioner means, it is a fact, is it not, Mr. Seelye, that some of the records of some of the companies are rather vague and ambiguous.

The Commissioner: Whether they are small or large companies. Certain figures in here on adjusted fixed capital are to some degree at least a judgment figure.

The Witness: That is right, yes, they are judgment figures, they are not founded on information obtained.

*Theodore E. Seelye—For Respondent—Direct*

By the Commissioner:

Q. They are not exact? A. That is true.

By Mr. Miles:

Q. Now, Mr. Seelye, I should like you to state for the record, if you will, the opinion of Day and Zimmerman as to what constitutes fair value of the property of the Edison Light and Power Company used and useful in the public service on December 31, 1936, such opinion being based upon the investigation that you and your associates have made? A. Yes. May I take a moment to check a figure which I have here.

In considering the matter of fair value all matters which relate to going value must necessarily be considered at the same time. That is to say, these various elements of value which exist in the property. The company has submitted a reproduction cost estimate of \$5,572,000 for the used and useful property of the Edison Light and Power Company.

By the Commissioner:

Q. That is new? A. That is new.

Q. That is before depreciation? A. That is before depreciation. The reproduction cost as of November 30, 1936, new less accrued depreciation is \$4,950,600 in accordance with the exhibit. During the last several years there has been a continuous upward trend in price levels, and I think as a matter of common knowledge, subsequent to the preparation of this report there has been a considerable increase in important items in this property. For instance, the price of copper has advanced quite materially since that date, having advanced from less than twelve cents to now about fifteen cents. The general tendency for labor and materials to increase in general is a matter of every day knowledge. The original cost as prepared by the company in its estimate submitted indicated an investment by the company in property installed of \$4,969,000,

*Theodore E. Seelye—For Respondent—Direct*

which is a corrected figure. An original cost was submitted by the Commission as of June 30, 1936 in the amount of \$4,582,000, and a book cost was submitted by the company in the amount of \$4,578,000.

Q. What was that now? A. That was the book cost submitted by the company in Exhibit 11. We have a working capital of \$150,000, and the amount submitted by the Commission was an immaterial difference from this.

By Mr. Miles:

Q. Not a material difference. A. Not a material difference. As affecting the value of this property we have going value which in my judgment is not less than \$400,000 and in consideration of these matters it is my opinion that the fair value of this property is not less than \$5,500,000, including working capital and the consideration of going value.

Q. Now, Mr. Seelye, will you state what consideration you have given to the question of rate of return, and what conclusion or opinion has been reached by you and your associates with respect to that question? A. I believe that the matter of rate of return is one which affects individual property more or less under certain circumstances. I think in the case of the Edison Light and Power Company there are peculiar circumstances which should be considered in fixing the rate of return. The electric rate payer benefits definitely from the affiliation of the Electric Company with the Steam Heat and Railways Company. The Steam Heat Company purchases steam from the Edison Company which makes it possible for the Electric Company to maintain its standby electric plant at a relatively small cost for the protection of service in emergencies, as well as for its advantage in bargaining for purchasing power. This benefit is reflected in the earnings of the Electric Company through the charges which it makes to the Steam Heat Company for steam which it sells. Nevertheless, without the existence of the Steam Heat Company these charges would

*Theodore E. Seelye—For Respondent—Direct*

not be present. Furthermore, it may be that an entirely conjectural statement, however, Steam Heat Company in separate hands might bargain in a different way from the manner it is doing today under the same management. The Railways Company has shown by exhibits which have been submitted, furnishes to the Electric Company the use of facilities which had an original cost of about \$168,000, this is exclusive, of course, of the storage space which they use. Besides all these properties there are other facilities which the Electric Company gains in many minor ways. An example of that might be to point to the fact that two direct current customers of the company are fed from the central station over feeder lines of the Railways Company. For none of this service does Railways Company charge the Electric Company. It must be evident that the company or the group of companies which have the same offices, the same executives, the same general situations must obviously benefit each other in many ways, because they operated for the mutual benefit of the top stockholder, and therefore, whatever advantage can be gained in any one company is for the advantage for the ultimate group of properties, so that it must be evident that the maximum cooperation must exist between these companies to their mutual advantage.

The administrative staffs of the affiliated companies would undoubtedly have to be increased if they were not operated jointly. I think that the arrangement whereby the Edison Light and Power Company bills the affiliated companies for a portion of the administrative expense for the services of individuals who can look after part of the work on each one of these companies, instead of duplicating their service in whole in the individual companies themselves is a considerable saving, not only to the Edison Light and Power Company, but to all of the companies in the group. Furthermore, Railways Company is a customer of the Edison Light and Power Company in the purchase of electricity, and according to testimony and exhibits in the record the Electric Company derives a profit, exclusive of overhead charges and administrative expenses that



*Theodore E. Seelye—For Respondent—Direct*

it would not have if the business were lost, a profit of more than \$15,000 a year. These matters are all of great advantage to the electric customers, since if the Electric Company return is inadequate to permit a continuance of the present affiliation the Electric Company would be called on to make capital expenditures, to increase its operating expenses, and depending upon the character of the separation of interests would lose that business which it now has on a profitable basis.

By the Commissioner:

Q. What do you mean by Edison Light and Power Company being permitted to earn a rate of return which is adequate to continue the present affiliation between these companies? What do you mean by that? A. I mean by that that if the Edison Light and Power Company were considered entirely without reference to these affiliated advantages its property taken solely by itself, and the rate of return in accordance with the Commission's order now in existence fixed at six per cent, that the circumstances are such that the operation of these companies under their present arrangement could not be continued.

Q. That is what I would like you to show, what do you mean by that? A. I think I will make that clear in a minute, Your Honor.

Q. All right. A. If that should happen the operating expenses of the Electric Company would be increased, and it would be required to make capital investments either through acquisition of facilities which it now uses belonging to other companies or by building the facilities to take the place of those facilities.

Q. Or by paying a rental? A. Or by paying a rental for the use of them. In the light of these things it would appear that the Electric customers neither gain nor lose depending upon the way in which the matter is handled. That is to say, if the company is allowed a return which recognizes these factors Electric Company's electric customers will pay for it through that increased return and the other facilities will con-



*Theodore E. Seelye—For Respondent—Direct*

tinue to operate at least as they are until such change might take place that would change the status of the situation. If the rate of return is made lower and does not recognize these factors then the Electric Company customers will have to pay it through increased operating expenses, through a return on increased investment, and perhaps through loss of business, loss of revenue from certain directions and sources, so that in the net result it is immaterial to the electric customers, but of great importance to the community.

Q. Mr. Seelye, you discussed the relation between the companies and the benefits that each gets from the relation with the other, but as a matter of fact you have not touched on the essential reason why apparently it is necessary to maintain a rate of return higher than that allowed by the Commission in every case for the last few years, namely, the necessity for the Edison Light and Power Company to assist in carrying the charges on the bond issue of the York Railways Company, isn't that correct? A. No, sir, I don't believe it is.

The Commissioner: Hasn't that been stated as a part of this case?

Mr. Miles: Not to my knowledge, sir, not your last observation.

If Your Honor will permit me to refresh your memory, we offered to produce testimony as to the plan which the management had for continuing this situation, and that offer was denied.

The Commissioner: Isn't it your contention that the York Railways Company is not in position to refinance its bond issue if it stands by itself?

Mr. Miles: Undoubtedly, but not the last point. There is quite a difference between the two.

The Commissioner: Is that so, the York Railways Company is not in position to refinance its bond issue if it is standing by itself?

*Theodore E. Seelye—For Respondent—Direct*

The Witness: I don't think it could.

Mr. Miles: No company could that is in the red \$125,000 a year.

By the Commissioner:

Q. Mr. Seelye, may I ask you this, I don't want to cut you off, but I would like to have you answer this question: If in your opinion the fair value for this property is \$5,500,000, as you arrived at it, I believe in your discussion. A. Yes.

Q. Then what do you think the net return is which this company is entitled to? A. Seven and a half per cent.

Q. On \$5,500,000? A. Yes sir.

Q. Which is \$402,000? A. \$412,000, I think.

Q. Yes, \$412,000. Now, the Company's net operating earnings as shown in Exhibit No. 14 are \$648,000 in 1936, were they not, and then on Exhibit 15 that was adjusted to reduce it according to the theory of the company, or the theory of Day and Zimmerman to \$608,000? A. Yes sir.

Q. So that on the basis of \$648,000, accepting your fair value and accepting your suggestion of a seven and a half per cent return there would be an excess of \$236,000, or under your adjusted capitalization an excess of \$196,000? A. It would not be on the adjusted calculation, because the adjusted calculation, and all the other calculations were made for the purpose of indicating the advantages which this company secured by reason of its present operating arrangement. It is on the basis of the \$648,000 actual net revenue for 1936.

Q. On the basis of \$648,000 then there would be an excess of \$236,000, would there not? A. Yes sir, about that.

Q. According to the testimony yesterday there was an offer of, I believe, \$240,000 of a reduction made by this company?

Mr. Miles: \$250,000.

The Commissioner: Well, \$250,000. You have heard that testimony.

*Theodore E. Seelye—For Respondent—Direct*

The Witness: Yes, I have.

By the Commissioner:

Q. I suppose on that general theory that would bring that down to a seven and a half per cent return? A. Exactly, yes.

Q. It would bring that down to exactly a seven and a half per cent return based on your best judgment of the fair value of five and half million dollars? A. Yes sir, that is right.

By Mr. Miles:

Q. Now, you didn't mean to imply in your last answer that the only reason the management offered a reduction of \$250,000 was because it was based on a calculation of seven and a half per cent on \$5,500,000?

The Commissioner: I didn't imply that. I said it came to approximately that figure.

Mr. Miles: That is true, and I think that is what Mr. Seelye wanted to say.

By the Commissioner:

Q. That calculation had not at that time been made? A. That is right.

Mr. Miller: I have no cross-examination at this time.

By Mr. Miles:

Q. Mr. Seelye, at the time that the offer of the \$250,000 reduction in revenue was made, Day and Zimmerman had by no means completed its investigation? A. No, they had not.

Q. And were Day and Zimmerman in any way consulted with respect to that closed offer? A. No, sir.

Q. That was a matter that came to their knowledge after they were in the case? A. Yes. If there is any question with respect to that matter, I may say that as a matter of coincidence or consequence of events it was only two nights ago that I

*Theodore E. Sledge—For Respondent—Direct*

expressed an opinion in this matter, and it was at that time that a computation was made by the company officials who said, "That is just about what we offered."

Mr. Miles: You, I didn't want any implication that Day and Zimmermann had started it.

The Commissioner: There was none intended, I assure you.

Mr. Miles: Now, Your Honor, with one qualification the respondent rests. We would like to have the privilege, if we care to exercise it, of putting a real estate expert from York on the stand whom we could not have available today.

The Commissioner: For the purpose of developing the value of what?

Mr. Miles: For the purpose solely of testifying, and I will say quite frankly, we have not been able to get in touch with him, for the purpose of testifying as to the propriety of the rental values contained in Respondent's Exhibit No. 10.

The Commissioner: That is rental for storage space at fifty cents a square foot as testified to by Mr. Reed. I think there is no objection to that.

Mr. Miller: No.

The Commissioner: Then the understanding is that the respondent rests with the qualification that it is privileged to place on the stand a real estate expert or experts for the purpose of developing evidence as to the rental values to conform to Exhibit No. 10.

Mr. Miles: And, of course, with the further qualification, if we discover any error in our exhibits we will correct them, and that we will have the privilege of offering rebuttal testimony if it becomes necessary.

*Clarence A. Mitchell—For Respondent—Cross*

CLARENCE A. MITCHELL, recalled.

*Cross Examination*

By Mr. Miller:

Q. Mr. Mitchell, referring to Respondent's exhibit No. 2, page 66, Account 239 rights of way, what is the length of the right of way involved there?

The Commissioner: What page, Mr. Miller?

Mr. Miller: Page 66.

The Witness: In account 239 rights of way pertaining to transmission system, the estimate for those rights of way is for the right of way necessary on the Red Lion No. 2 circuit from the East End sub-station to Red Lion sub-station. The distance of that line is 7.38 miles.

By the Commissioner:

Q. Before we go any further with this matter, Mr. Mitchell, there is no—rather putting it this way: There are other factors in this complete report, Exhibit No. 2 which give the circumstances in connection with the right of way on this same joint, are there not, in addition to the transmission system right of way? A. No, this is the only one.

Q. What I am trying to get at is where you have a right of way between Smyser's and Gitt's Run on that Exhibit No. 10 you have got one right of way of 13 miles and one right of way of 4.42 miles, the right of way as paid for by the Edison Light and Power Company has no relation to these two figures, has it? No, sir.

Q. Because those rights of way are owned by the York Railways Company? A. That is true.

Q. Are there any figures in Exhibit 2 that apply in any way to those rights of way, there are, are there not? A. Yes, sir, they are owned solely by the Edison Light and Power Company.

*Clarence A. Mitchell—For Respondent—Cross*

By Mr. Miller:

Q. Will you give me the breakdown of your figure of \$1267 in the item of acquisition of rights of way, tree trimming permission and cost of recording easements? A. That figure of \$1276 used in our reproduction cost estimate was not an estimate. We secured that figure from the Company's books, and since our investigation into the original cost estimate we found that this figure of \$1276 is understated by approximately \$1200 due to the fact of a misunderstanding between Mr. Steese and myself as to this figure that he gave me on the cost of that right of way. Due to the fact that it was such a small sum of money we didn't think it was necessary to hire an expert to go out and make an estimate, we just used the Company's cost on that, which as I said is low.

By Mr. Miles:

Q. You mean their cost was approximately \$2400 instead of \$1200? A. As I testified the cost originally I think of that land was around \$2300.

By Mr. Miller:

Q. Now, can you give me the proper amounts for acquisition of right of way, tree trimming permission and the cost of recording easements? A. They come from the original cost estimate.

The Commissioner: I think that the witness just testified that the actual facts were that the amounts were considerably greater than recorded in this exhibit.

Mr. Miller: That is correct.

Mr. Miles: Are you asking him now to make an estimate of the reproduction cost of these things, or the actual cost experience of the company.

Mr. Miller: Well, I want the break down of the total figure. He says now that he knows that the books show—



*Clarence A. Mitchell—For Respondent—Cross.*

that the actual cost was approximately twice as much as this, and I want him to tell me what the books show as to the various items.

Mr. Miles: You want a break down of original cost and not reproduction cost.

Mr. Miller: That is right.

Mr. Miles: That is what I wanted to get at.

The Commissioner: You don't want a break down of \$1276.

Mr. Miller: No, that is an incorrect figure on original cost.

The Commissioner: I don't understand that it is an incorrect figure at all. I understand that the reproduction cost as estimated is \$1276, that the actual experience of the company in that particular work at that time was almost twice as much.

Mr. Miller: I want a break down on the \$1276 then, first.

The Commissioner: In fairness to the company it should be noted that this is not an incorrect figure in an estimate of reproduction cost. A company might spend ten times as much on the property as it should, but in a reproduction cost you would estimate what the company can properly spend on such a piece of work.

Mr. Miles: It may for instance be held up in getting a right of way which frequently happens.

The Commissioner: It would not enter into a calculation of reproduction cost.

Mr. Miller: But the witness himself said it was a mistake, Mr. Commissioner, that he based his judgment to get this figure of \$1276 on information which was given him which he found later was incorrect. I don't impute any bad motive to the witness, it was just a mistake, and it is a mistaken figure.

*Clarence A. Mitchell—For Respondent—Cross*

What I would like to have is what the various items are that go to make up the total figure, and if Mr. Mitchell wants to correct his figure of \$1276 I am perfectly willing to have him do it.

The Commissioner: Mr. Miller, I am not going to try to curb your cross examination, but I cannot for the life of me see what particular interest it is to the Commission to have in a reproduction cost estimate of a company a figure raised from \$1276 to \$2300.

Mr. Miller: Because what we want is the facts, Mr. Commissioner, and the witness has explained that that figure is a mistake, is an error.

The Commissioner: I am sorry, but I don't understand it in a reproduction cost estimate.

The Witness: I would like to correct that statement. I didn't intend to say that that figure was an error, I said there was a misunderstanding in that figure. I thought I was getting the entire cost from Mr. Steese for the right of way, that was the misunderstanding. I find that it only included the actual cost of the right of way, it didn't include the cost of acquisition. I have taken care of the cost of acquisition in my percentages, my poles and fixtures account and my wire account. I set up the right amount in the overhead, direct engineering and supervision accounts.

By Mr. Miller:

Q. All right, then, will you give me the break down of the items in your figure of \$1276? A. I don't have a break down of the \$1276. That was merely given to me as a lump sum figure to represent the cost of the right of way and the cost of recording.

*Clarence A. Mitchell—For Respondent—Cross*

By the Commissioner:

Q. These figures are all recorded somewhere, and they were the actual cost? A. Yes, we can secure all that.

The Commissioner: That is what you want.

The Witness: In fact I have it on the original cost, I can give you the expenditures by months, what it actually cost, which will be around \$2400. So far as my estimate is concerned I think that the figure is a reasonable amount to pay for right of way in that territory.

By Mr. Miller:

Q. What I want to know is how you arrive at the figure of \$1276 as including the acquisition of rights of way, permission to trim trees when necessary, including the cost of recording such easement as indicated on that exhibit.

Mr. Miles: May I make an effort to clarify this?

By Mr. Miles:

Q. Mr. Mitchell, isn't this a correct statement that I am going to make to the Commission: I understand when the witness came to this item he felt that it was such a small thing as not to justify the employment of some assessor to go out and make an estimate of what it would cost to reproduce this right of way. He therefore asked the company what their books showed it actually did cost and through a misunderstanding between Mr. Steese and himself Mr. Mitchell set the figure up at \$1276 when it was in fact \$2900.

The Commissioner: \$2300.

The Witness: Approximately \$2400.

Mr. Miller: We will get the break down of that when we come to original cost. We will leave it for the present.

The Commissioner declared a recess of five minutes.

*Clarence A. Mitchell—For Respondent—Cross*

## AFTER RECESS

CLARENCE A. MITCHELL, recalled.

*Cross Examination*

By Mr. Miller:

Q. Mr. Mitchell, referring to page 103 of Account 242, will you tell me how the pole classification was determined in the field when you made the inventory? A. When we made the inventory we made no effort to determine other than by actual inspection of the classification, because it is practically impossible to determine the exact classification by any measurements in the field, unless you actually measure the tops and the butts at the ground line, and we have devised a method which is much simpler, and we think gives us better results. Our method for determining the classification of the poles is to take the poles as pictured by the company over a period of ten years, and taking a weighted average of those classifications as to price, and from that weighted average we determined the price of a thirty-five foot cedar pole regardless of class. I might say that in order to determine this class we selected some 16,000 poles direct from purchase orders of the classes that the company had actually been purchasing so that we know that the prices that we have used here represent the actual classes that are in the field.

Q. Do you know whether the chestnut poles shown on page 103 were butt treated or not? A. Yes, sir.

Q. That was the classification on which you obtained the price, is that correct? A. Yes, sir.

Q. From whom did you obtain quotations on the chestnut poles? A. On the chestnut poles we obtained our quotations from the Preserved Wood Incorporated, Washington Court House, Ohio. That was the same firm that is now supplying the Edison Light and Power Company with their chestnut poles. To check our prices received on that quotation we

*Clarence A. Mitchell—For Respondent—Cross*

secured prices from the Piedmont Pole and Tie Company in Virginia, Staunton, Virginia.

Q. And on what pole classifications did you obtain prices, chestnut pole classifications? A. We obtained prices on chestnut poles for the following classifications: Class 1, class 2, class 3, class 4, class 5, class 6 for the various heights ranging from 25 feet to 60 feet, for these various classes.

Q. And on what classifications of cedar poles did you secure quotations? A. We secured quotations on western red cedar poles, on sizes from 20 feet to 60 feet inclusive, and class 1 to class 6 inclusive.

Q. Now, how from that price information did you arrive at the figure shown on page 103, taking a 45 foot cedar pole for example. A. This will take just a little time to follow that straight through for you, but in general I can tell you that we arrived at the unit prices of material for a 45 foot cedar pole, which is \$19.42 for the material f.o.b. York, Pennsylvania.

Q. And what is that based on? A. \$19.42 is based on a weighted average of the two classifications that the company has been purchasing during the past ten years. In other words, I selected from the quotation a price for a class 2 pole, and took the number of classes and the poles that the company had purchased in the past ten years, and I selected from the quotation a price for class 3 poles that the company had been purchasing and applied that to the figure that the company had purchased during the past ten years, and that gave me a weighted average price on a 45 foot pole, which is \$19.42.

Q. Now, we have the pole f.o.b. York. Will you give me any further amounts which entered into your cost of the pole installed? A. Yes sir. We have the labor for installation which is broken down into three operations. We have the equipment costs for that pole, which is a break down of three operations, then we have the direct engineering and field office supervision which is applied against the total of that pole in place

*Clarence A. Mitchell—For Respondent—Cross*

to arrive at a total unit price in place of a 45 foot western red cedar pole.

Q. How did you arrive at the equipment cost in connection with that? A. The break down for equipment for that particular pole?

Q. Yes. A. For instance, unloading, stacking the poles, we have allowed 17 cents a pole; for the distribution of poles we have allowed \$1.07; for digging holes and setting a 45 foot pole in question is \$1.65; giving a total equipment charge against that 45 foot pole, western red cedar of \$2.89.

Q. How did you get your figure of \$1.65 for digging holes and setting those poles in the equipment cost? A. First, in the excavation of holes by hand we have estimated two hours per day, at \$2.00 per hour for a truck which is \$4.00 per day equipment charge against this crew which is excavating holes. A crew consists of one labor foreman and ten laborers and a truck driver of two hours. This truck is used to transport the men out to the various pole locations and transport them up and down the right of way, and transport their poles. That is a \$4.00 item for the excavation by hand. Now, in setting the poles we have a three and a half ton truck equipped with a wench, pole derrick which we have estimated at nine hours at \$2.50, or a total cost of \$22.50 per day, and the number of poles that a crew consisting of one line foreman, one lineman first class, and a lineman second class, one ground man, three laborers and one truck driver. With this truck that crew will dig, backfill and tamp in the following holes per day: For instance, a 45 foot pole that crew will install eighteen per day, which mathematically gives you a unit price for equipment of \$1.25 per pole. Then for machine digging, where we use machines for digging holes and setting poles we have a crew set up and the equipment on this machine, combination pole digger and setting machine, nine hours, \$3.00 an hour, \$27.00 a day for a 45 foot pole, it will average sixteen poles per day or the equivalent equipment cost per unit for a 45 foot pole of \$1.69. Then by taking those



*Clarence A. Mitchell—For Respondent—Cross*

figures I arrive at a weighted average of digging holes, setting poles by hand operation and by machine operation based on a percentage of 25 per cent of all the holes to be excavated and poles set by hand operation and 75 per cent by machine operation, and by working out this weighted average on the hand operation cost and the machine operation cost for the equipment only we arrive at a figure of \$1.65 for a 45 foot western red cedar pole.

Q. How do you arrive at your \$1.07 figure for distribution?

A. Distribution we have a crew set up, one material foreman, one material checker, one laborer and the truck driver. With this crew we have a three and a half ton truck with trailer, which we have estimated at \$22.50 per day. This above crew will haul to site and unload the following per day: On a 45 foot pole they will haul an average of 21 poles per day, which gives an average cost of the equipment only of \$1.07 per pole, for that 45 foot western red cedar pole. Now, that is based on this crew on an average carrying 7 poles per trip, making three trips per day, giving us 21 poles total average, and that takes care of your long hauls and short hauls and cross country work, and in my experience why that is the operation that is required to deliver that many poles.

Q. Will you give me the labor installation costs? A. In the same manner as the equipment?

Q. Just to the money. A. For the 45 foot pole, western red cedar, labor for unloading and stacking is 35 cents per pole; labor for distribution of poles 75 cents per pole; digging holes and setting poles is \$3.43 per pole, giving a total of \$4.51, is the total labor for that 45 foot western red cedar pole.

Q. Now, is there any other additional item which should be added to the \$19.42 the equipment cost and the labor cost to give the cost of the pole in place? A. To the total of the material of labor and equipment cost which in this instance for the 45 foot western red cedar pole is \$26.82, to that figure we have

*Clarence A. Mitchell—For Respondent—Cross*

added a percentage of 12 per cent to cover direct engineering field office supervision, which in this case is \$3.22, making the total cost of the 45 foot pole in place with the direct engineering and supervision expense applied of \$30.04.

Q. Now, turn to page 119, Account 245, underground conduits on page 120 in that account you have made an allowance for paving. Was the paving actually in place before the underground conduits were laid? A. Yes sir.

Q. How do you know that? A. We get that from our original cost setup, and of course, we knew that at the time we prepared this estimate, and we verified that, the exact amount of money involved in the investigation of the original cost. /

Q. Did you observe the conditions of the conduit laid underground? A. Observed the condition of the conduit, no sir, only in the manholes where they terminate in the manholes.

Q. You could not see very far from the manholes, could you? A. No sir.

By the Commissioner:

Q. You didn't tear up the streets? A. No, sir. We didn't make any physical inspection of the underground conduits.

By Mr. Miller:

Q. How did you determine the percent of condition then? A. Due to the fact that it was a recent installation, brand new practically, only installed about five years, the materials and the specifications were of the best type, and deterioration of that property is very very slow, and naturally it takes a very high percentage of condition. It is quite adequate, considering the use of the system and the newness of it, naturally it carried a high degree of condition.

Q. That would be about 1 per cent deterioration per year, wouldn't it, if it had been in there five years? A. That so happens, but that was not figured out on an annual rate. In other words, I was convinced from the operating records and so on

*Clarence A. Mitchell—For Respondent—Cross*

that two years from now that particular piece of property may be in just as good condition as it is today if it is properly maintained, so that it would not be necessary to take a yearly depreciation.

Q. Did your accrued depreciation estimate include consideration of obsolescence? A. Yes, sir.

Q. And based upon your observed method of determining accrued depreciation how would you arrive at an annual depreciation allowance? A. Well, you would have to consider the obsolescence, the inadequacy and the nature of the design or the specifications under which the equipment was designed, and arrive at a fair yearly depreciation by considering these items, and might try to make some attempt as to visualizing, if it was possible, at what future time it would require replacement of certain items. That is practically impossible to figure however, but you do give it some consideration, very minor. As I say you have to in using your percentage annually, consider the same elements as I have outlined, namely, adequacy, obsolescence and the degree of maintenance that is being applied to the property. That is a major item, the amount of maintenance each year spent on the property as to its yearly depreciation. If you are accumulating a little deferred maintenance each year the depreciation should be greater annually, and if you are maintaining the property in first class condition depreciation naturally is smaller per annum.

Q. Now, could the method you use in determining accrued depreciation be used to calculate annual depreciation allowance?

A. Yes, I think I could do that.

Q. So that your computation of annual depreciation would bear the same relation to your accrued depreciation? A. Yes sir, it would.

Q. Now, you testified that you took into consideration in determining the accrued depreciation, obsolescence and inadequacy in relation to underground conduits, what obsolescence or inadequacy is there in those conduits? A. Well, there is not

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any now. In other words, the conduit system as built is certainly adequate to take care of the present needs, and I also studied it for over-adequacy, take care of the future. I don't think it is over-adequate. There is certainly no obsolescence to speak of since this system is practically brand new, and for that reason as I say we gave it a high percentage of condition.

Q. Now, take the four inch conduit, six holes, is that, high, and four wide—at any rate we will read it as it appears here, take the four inch conduit, six wide and four high, can you give me the break down of your figures on that?

The Commissioner: That is the fifth item?

Mr. Miller: Yes.

By the Commissioner:

Q. What is six wide and four high? A. That is the formation of the duct, it is six ducts wide and four high, making twenty-four in the formation. The figure of \$1178 on page 119, Account 245 underground conduit was arrived at by setting up a unit price for the fiber, and to that adding labor installation, and the field office and supervision expenses, and multiplying the unit by the total of 207 feet gives us \$1178.

Q. Will you give me the amounts of those items? A. The material of four inch duct per lineal foot is .113 dollars per foot; field office and supervision expenses applied against that is 20 per cent, which gives a total cost of .1266 dollars per foot for the four inch duct delivered to York. To that we have hauling and stringing .0048 dollars per foot; we have laying duct plus concrete envelope, that is .0343 dollars per foot, giving a total of \$1657 dollars per foot on four inch duct.

Q. Now, take the figure of 662 cubic yards of excavation \$2138, will you give me the break down on that, on the same page, 119? A. Excavation for trenching is made up by estimating a crew and foreman which gives a daily cost of \$54.84.

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Q. How many were in the crew? A. Fifteen laborers, eight hours per day at 43 cents per hour and one foreman half time, four hours per day at 81 cents. In other words, this foreman would spend half of his time on other operations. The above crew will excavate an average of 45 cubic yards per day, giving an average of .122 for excavation. To that we add 12 per cent for field office and supervision arriving at a total cubic yard unit of \$1.37.

Q. How much was that figure per cubic yard, and excavating? A. For trenching was \$1.37.

Q. Now, there are 662 cubic yards, and the amount of cost is \$2138?

The Commissioner: That is about three and a half—considerably over three?

The Witness: That was just for the labor for excavation. Now, we having shoring in addition, we have a total of 3.23 for excavation including shoring.

By Mr. Miller:

Q. How deep is the trench? A. That runs, I believe, from five to ten feet in depth. I can give you the actual depths. I don't have them right here with me now.

Q. Do you know what proportion is six foot trenching?

The Commissioner: That is six feet in depth.

Mr. Miller: Yes, six feet in depth.

The Witness: I don't know the exact proportion at this time. I can furnish that at a later time; it can be calculated from my notes.

By Mr. Miller:

Q. I would like to have that. You wouldn't need shoring in a six foot depth trench, would you? A. Yes, sir. we have shoring in all the trenches.

Q. How wide is the trench? A. Approximately it runs from



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two to three feet in width. We found it is much cheaper to insure our workmen by shoring the excavations, especially through city streets, than it is to eliminate the shoring and take chances of cave-ins.

Q. Now, did you figure machine costs on this excavation?

A. No, sir.

Q. Why? A. Well, for the small amount of trenching it was cheaper to excavate by hand than it would be to invest in a machine, or even try to rent a machine, and it is not very satisfactory in the main streets of a town.

Q. Are these underground conduits laid in the central part of the city of York? A. They are laid in the block around the central generating station. They are on Railroad Street, on Philadelphia Street and Park Alley.

Q. Now, will you give me the break down on the back filling cost, the figure in the next line on the same page? A. Back filling, including tamping, we set up the same crew, fifteen men, one foreman part time, total cost per day \$54.84. The crew will back fill and tamp in an average of 70 cubic yards per day, or a unit price of 78 cents per cubic yard, to which we add field office and supervision, 12 per cent, arriving at 87 cents a cubic yard for back filling.

Q. Did you consider the possibility of flushing instead of tamping? A. No, sir, on this small operation, small job, a straight labor operation would probably work out much better. In my opinion it would work out better than setting up something out of the ordinary to handle such a small amount of work.

Q. Now, take the manholes. Will you give me—

By the Commissioner:

Q. Were these conduits placed in streets that were already paved before the conduits were put in? A. Yes, sir.

Q. Who paid for the repaving of the streets? A. The Edison Company.



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Q. Is that covered here? A. Yes, sir.

By Mr. Miller:

Q. Will you give me the break down on the cost of a manhole? A. The cost of a manhole is made up as follows: By taking the total labor material and equipment for all of the manholes involved and adding a percentage of 12 per cent, arriving at a total cost of \$338.70 for an average of each manhole. These manholes are made up of materials—in other words, we had excavation, back filling, concrete roof, concrete walls, brick walls, manhole covers and frames are all included in the unit price for material.

Q. At what price? A. For instance, concrete material prices are based on using ready mixed concrete at \$7.25 per cubic yard delivered.

Q. Will you tell me where you obtained these prices as you give them? A. The price of \$7.25 I didn't personally obtain. Under Mr. Reed's direction the building department secured that price, and they have the information on that. I merely secured that from Mr. Reed. However, we do have the backup for that unit price. Our labor for excavation of manholes, we have a crew set up of four laborers, one foreman, a quarter of his time, giving a total daily cost of this crew of \$15.38, and this crew will excavate an average of 8 cubic yards per day, giving a total of \$1.92.

Q. Per cubic yard for excavation? A. And we have the cost of disposal of 60 cents per cubic yard for labor at 80 cents per cubic yard for equipment, giving a total of \$1.47 for disposal. Brick work we have material \$17.33, labor \$13.90, a sub-total of \$31.23 per thousand, which is a price we obtain from the building department of Day and Zimmerman. We have steel beams for the roof .035 dollars per ton and the labor is .005, a sub-total of .04. We have shoring of .05 dollars per square foot, and a labor of .05, giving a total of 10 cents per

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square foot. We have 30 inch cast iron manhole covers and drains \$45.00; \$5.00 for labor, giving a total of \$50.00. Those are the major items of material and labor that go into making up the unit price for each manhole. I can give you the quantities in each manhole or any of the manholes and the unit price applying against those quantities to show how I arrived at the \$338 figure per manhole.

The Commissioner: Can an estimate be prepared by this witness along that line instead of going into every infinitesimal item here?

Mr. Miller: We are not going to.

The Commissioner: Could he not give you an estimate in the form of an exhibit sheet that would cover all of that, or have you all you want?

Mr. Miller: We have all we want anyhow now.

By Mr. Miller:

Q. Turn to Account 246 on page 121, underground conductors. How was the unit cost of 403 arrived at?

The Commissioner: Which one are you talking about, the first item?

Mr. Miller: The first item, 3116 feet No. 403 Cond. V.C.L.C., which I understand is varnish cambric lead covered 15,000 volt copper, how did you determine the unit cost per foot of that?

The Witness: The unit cost of that was determined from a quotation on the material—a quotation was secured from the General Cables Corporation. The quotation as received from the General Cables Corporation is \$17.37 per thousand feet. That is the material price effective as of November 30, 1936, delivered to York. To that material price we added the cost of delivery and the cost of pulling in, installing the cable, and to those units we added 12 per cent for field office and super-

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vision expenses, arriving at a total cost per foot in place of \$2.13.

Q. What was your cost of pulling in and splicing per foot?

A. .0687 per foot.

Q. Now, how did you determine the accrued depreciation of this account? A. I determined the accrued depreciation on this account similar to the underground conduit account, that is, by considering adequacy, obsolescence and the condition of the cables themselves in each manhole, and the maintenance or outage records of the company. In other words, a study was made to find out if the company experienced any trouble with the cables, and I found that they had no cable failures. The specifications and the size of the cable is adequate for the loads that it has to carry and will carry for some time. It is not over adequate. The condition in the manholes, the racking of the cable is in excellent condition, it is well insulated with insulating blocks on the cable racks; the cable is fire proofed in each manhole, which is a factor to consider in depreciation. With those factors I arrive at the percentage of conditions for the underground conductor.

Q. I believe that percentage is approximately 95 per cent, is that right? A. Yes, sir.

Q. How long have the underground conductors been installed? A. 1930-31.

The Commissioner adjourned the hearing until March 31, and April 1 and 2.

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I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Service Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER,  
Official Reporter.

*Clarence A. Mitchell—For Respondent—Cross*

Harrisburg, Pennsylvania, March 31, 1937.

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Further hearing in above matter, held at the offices of the Public Service Commission, Harrisburg, Penna., on above date beginning at 9:30 o'clock A. M., Commissioner Stahlnecker presiding.

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PRESENT:

S. G. MILLER, Esq., (Harrisburg) for Public Service Commissioner.  
V. K. KEESEY, Esq. (York, Pa.); CLARENCE W. MILES, Esq., (Baltimore, Md.) and DAVID I. McCAHILL, Esq., (Pittsburgh, Pa.) for respondent.

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EVIDENCE IN BEHALF OF RESPONDENT continued.

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CLARENCE A. MITCHELL, being recalled for further cross examination, testified as follows:

By Mr. Miller:

Q. Mr. Mitchell, will you refer back to account No. 245, underground conduits, under four inch fiber conduits, six by four? At the last hearing you stated that you had used a unit price of .1657 dollars per foot of four inch duct. Will you tell me how, using that unit price, you arrived at a cost of \$1,178.00 for 207 feet of such conduit? A. The price of .1657 dollars per foot is for the duct itself. In addition to that we have the concrete envelope. The unit price per foot of that size duct, which is 654 including the price of the duct, is \$5.67 per foot, and that multiplied by 207, I think, will give the \$1,178.00 figure.

Q. The sum of .1657 dollars is for the duct alone, and you

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add to that the conduit? A. Yes, sir, to get the \$5.95 total—the \$5.69 total.

Q. Referring to account No. 256 on page 125 of the exhibit, was the classification of poles for that account determined in the same manner as was used with reference to account No. 242, transmission system? A. Yes, sir.

Q. Are the cross arms in this account Nealy, or were they separated in the inventory as to particular lengths? A. The cross arms were separated in the inventory as to particular lengths, that is two pin, four pin, six pin, eight pin cross arms.

Q. Are they Nealy or electric light arms? A. They are Nealy arms.

Q. Was an allowance of twelve percent for direct engineering and field office supervision applied to the unit costs in this account? A. Yes, sir.

Q. To find the unit costs? A. Yes, sir; in account 256.

Q. Take account 257, overhead conductors, will you tell us how you determined the size of wire in the field? A. The size of the wire was determined in the field. An experienced company lineman was along during the inventory, and with the experience of our own men, who were experienced company linemen, the size of the wire was determined. Then a check was made with the distribution department in any case where there was any doubt, and it was verified from the company's records.

Q. You mean that you and your associates, your associate investigators, went out along the street and would look at the wire and say that is such and such size wire? A. Yes, sir.

Q. Was the length of the wire actually measured in the field? A. The length of the wire was paced off, the spans were paced, and the average length taken, and out in the suburban centers, where we used a speedometer between the sections.

Q. When you say the average length of the span was taken, you mean between the poles? A. Yes, sir.

Q. You paced two or three spans, then you averaged it, and counted the poles? A. Yes, sir.



*Clarence A. Mitchell—For Respondent—Cross*

By the Commissioner:

Q. Is that the standard method of measuring wire? A. Yes, sir, it is the accepted method. It is just as accurate as trying to measure with tape.

By Mr. Miller:

Q. Did you make any allowance for sag? A. No, sir.

Q. Can you give me the base price which the Anaconda Wire Company furnished you? A. The bare copper wire base price which the Anaconda furnished us was 14.25 cents per pound.

Q. As of what date was that price furnished? A. That was November 11th.

Q. 1936?

By the Commissioner:

Q. What is the price of copper now? A. Why, this morning's paper quoted 17 cents.

By Mr. Miller:

Q. That would not necessarily be comparable to this wire cost? A. This wire cost would probably be around 20 cents a pound now.

Q. Did you make an allowance in your figures for quantities over 30,000 pounds? A. Yes, sir.

Q. How did you determine the unit cost for the 2/0 triple brade weather proof stranded copper wire? I believe the 2/0 triple brade weather proof stranded copper wire is designated T.B.W.P.? A. That is correct. At first we took the weatherproof base price, which is 16.5 cents per pound. That price was as of November 7th, 1936. To that base price we added freight, and we added for medium hard drawn, bringing the total base up to 16.95 cents per pound.

Q. The difference between 16.05 and 16.95 is the freight charges? A. The freight charges and additions for medium hard drawn.

Q. How much was the freight? A. The freight is .3 cents.



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From this 16.95 cents we deduct for 100,000 pounds and over, which is .75 cents and that gives us 16.02 cents per pound. From that price we deduct 5% for cash, which is .081 cents per pound. That gives us a delivered price, exclusive of extras for sizing and stranding, 16.119 cents per pound. Then to the 16.119 cents per pound we add .15 cents per pound for size and stranding, which gives a total cost delivered of 16.269 cents per pound.

Q. What do you mean by size, as distinguished from stranding? A. That is extras that the copper companies charge for the stranding and the drawing of the size.

Q. In other words, making wire out of copper? A. Yes, sir; they give you the base price and to that base they add extras for sizing and stranding and for weatherproofing, and by adding all of those we arrive at the unit price for the material that we used in our exhibit. Converting that price into feet we get the price of weatherproof 2/0 copper wire solid of .0822 dollars per foot.

Q. How do you convert that price per pound into feet Mr. Mitchell? A. We get the weight per foot and the cost per pound, and the cost per foot—

Q. What is the weight per foot of 2/0 wire? A. .502 pounds per foot.

Q. Mr. Mitchell, how do you reckon the cost or compute the cost of placing this wire? A. We set up a typical general line construction crew which will unload and deliver and install, and strain sag and tie in the conductors. We take this crew and set up a typical performance for the crew for the various sizes of conductors involved, and arrive at a unit labor and equipment price per foot installed.

Q. Will you give me the crew and the wage figures you used in the performance? A. The general line construction crew consists of one line foreman at 95 cents per hour, including Workmen's Compensation and Public Liability; two linemen first class at 84 cents per hour, including two linemen second class at 60 cents. All of these prices include Workmen's Compensation and Public Liability insurance. Four ground men at 53 cents an hour; one laborer at 42 cents; one material checker

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at 53 cents per hour; one truck driver at 53 cents per hour. This gives a total crew cost per day of \$61.41, to which is to be added \$22.50 per day, which gives a total cost, including the cost of labor and equipment, of \$83.91 per day. That is divided by the performance, which gives us the cost per foot with the installation.

Q. What is the performance of this crew? A. This crew will install 10,000 feet of No. 8 weatherproof solid in a day. Do you want me to give all of the performances or do you have any particular size that you have in mind?

Q. On the 2/0 wire? A. 5,200 feet per day.

Q. Is there anything else included in your cost of this wire other than what you have given me? A. Distribution of the conductor and return of reels have been included on a foot basis, and that is .0007 dollars per foot. That is added to the actual labor and equipment cost.

Q. How was the observed condition of 95 percent determined for this account? A. By making a field inspection, observing the condition of the conductors and by checking with the company's records in the engineering department, to determine the adequacy of the sizes that the company was using and the nature of the material itself, as far as deterioration is concerned, and obsolescence. All of these factors were considered in determining the condition of the conductor.

Q. What obsolescence would there be in copper wire? A. For instance, if you would have a line going to a certain customer or a group of customers, and if anything would happen that you would lose the customers, you would not need that line there any longer, and that would be the only obsolescence that you would consider.

Q. There would be obsolescence if the demand in the territory grew greater instead of less, and range customers were put on the line? A. That would be inadequacy.

Q. I think you stated that you believed that the accrued depreciation, computed on an observation basis, should be related to the annual depreciation allowance. How would you do that in the case of copper wire, generally? A. A study would have

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to be made of the company's maintenance policy, their engineering policy, a study of their load demand, to determine the inadequacy,—a study of all of these conditions, and an annual depreciation could probably be set up to cover the matter.

Q. How would that be related to accrued depreciation? A. The accrued depreciation was figured after observation of the condition of the property.

Q. There really wouldn't be any relation between an accrued depreciation allowance, based upon observed conditions, and an annual depreciation figure or estimate, based upon the calculations you have mentioned? A. No, sir.

Q. Did you apply the 12% allowance for engineering and field superintendence in account 257, to the various unit costs in that account? A. Yes, sir.

Q. Taking account 258, overhead transformers, did you apply the discount, based upon the amount of the purchase, to obtain the cost in that account? A. Yes, sir.

Q. How did you determine the observed condition of 91% for this account? A. By a study of the company's maintenance policy, their inspection, their transformer policy, the type of transformer used and the transformer failure.

Q. Did you take into consideration the age of the transformers? A. No, sir, for this reason, transformers can be maintained to a very high percentage of condition. Regardless of the age of the transformers you can always have them rewound and it practically makes them new transformers. The Edison Light and Power Company are continually having their transformers rewound for change in voltages, and as to those transformers the record of the failure shows that those particular transformers that have been rewound have a better service record than the new transformers put out into service.

Q. Do you consider that rewinding to be a maintenance or an expense which should be paid out of the depreciation reserve? A. I do not know how the company charges that, whether that is a charge to maintenance or not. I know that the overhauling of transformers is a maintenance charge, the same as the over-

*Clarence A. Mitchell—For Respondent—Cross*

hauling of meters. On the rewinding, I am not sure just how that is charged.

Q. I am asking for your opinion, do you consider that to be a maintenance expense or would that be a matter for depreciation? A. That would be a maintenance expense.

Q. That is rewinding? A. Yes, sir.

Q. I note that you have given the transformers an observed condition of 91%, an observed use condition, or useful condition of 91%, while the transformer installation has a similar observed use condition of 95%. Why the difference in the figures? A. According to the interpretation of the classification of accounts, when transformers are retired, transformer installation is not retired necessarily. If a transformer of the same kind is installed in the location, the transformer installation is not retired, and for that reason you do not give as much depreciation on the installation as you do for the transformer itself.

Q. Take account 260, overhead services account, how do you determine the size of services in the field? A. That was determined in the field by the same method that we determined the size of the distribution circuits.

Q. Then I take it that the length was determined in a similar way, similar to that which you have mentioned in connection with the distribution circuits? A. Yes, sir.

Q. How did you determine the observed condition of 95% on the overhead services? A. Due to the character of the material, the size of the service wire and in the service cables.

Q. Did you take into consideration the time the lines have been up? A. Only to the extent of studying the overloaded condition, and otherwise, you do indirectly consider that, but as far as the age of the conductor itself is concerned, that does not have very much bearing. If it is large enough or adequate, the depreciation would be very small.

Q. In other words, you considered its adequacy, and you arrived at your opinion as to the adequacy of the service without particular reference to the age? A. Yes, sir.

Q. Take account 267, meter installations. You testified that you depreciated this account 3% due to the interpretation of the

*Clarence A. Mitchell—For Respondent—Redirect*

Public Service Commission classification of accounts. What do you mean by that? A. That is the same as transformer installation. In other words, the classification of accounts, states that the meter installation should not be retired when the meter is retired, so long as the meter is replaced in that location, so that you can retire the meter without retiring the meter installation.

Q. Referring to account 273, municipal street incandescent system, you have allowed for paving in York. Was this paving actually done prior to the time the conduits were laid? A. Yes, sir.

Q. Where did you obtain that information? A. From the company's engineers. Is that account 274?

Q. 273. A. What page do you have reference to?

Q. Page 222, square feet of asphalt or concrete paving? A. That is a very small quantity. That is in connection with the street lighting around Center Square in York. The paving was there at the time of the installation.

Q. Turn to page 223. How did you arrive at the estimated cost of the switchboard of \$1,144.00? A. Mr. Favor estimated that; he is responsible for that figure. This was inventoried along with the sub-station equipment, and Mr. Favor priced those switchboards.

Mr. Miller: That is all we have with Mr. Mitchell.

*Redirect Examination.*

By Mr. Miles:

Q. Can you state what has been the trend in prices of wire since November 30th, 1936? Has it been upward or downward? A. The trend has been upward.

Q. Can you state what has been the trend in the price of coal since November 30th, 1936? A. That has been upward too.

Q. Have you any information as to the trend in labor costs, in connection with the installation of pipe of the character embraced in respondent's exhibit No. 2, since November 30th, 1936?

A. Yes, sir, I am satisfied that we would have to increase our labor rates if we were building the property today. In fact, in



*John B. Ink—For Respondent—Cross*

all of our estimates, we are increasing our labor rates five to ten cents per hour.

Q. What has been the trend in the prices of conductors and transformers since the same date? A. Conductors and transformers?

Q. Yes. A. Conductors, that is cable, the wire prices have been upward, and the transformer price has increased.

Q. In connection with account No. 258, relating to transformers, do I understand that in estimating the reproduction cost of such transformers you assumed that the company would get the benefit of its existing discount rates? A. Yes, sir.

Mr. Miles: Mr. Miller, do I understand that you are through with Mr. Mitchell in this case?

Mr. Miller: That is correct.

Mr. Miles: May he be excused?

Mr. Miller: Yes.

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JOHN B. INK, being recalled for further cross examination, testified as follows: <sup>c</sup>

*Cross Examination.*

By Mr. Miller:

Q. Mr. Ink, you stated that the plant has a capacity to carry the maximum steam heating load and at the same time 7,000 kilowatts of electric load. How did you compute the 7,000 kilowatts of electric load? A. We found from a test that the boilers would produce 229,151 pounds of steam per hour, and from the records of steam consumption by the heating company on a maximum day, we found, on January 28, 1936, it was 125,255 pounds. That left a balance of 103,896 pounds available for No. 2 turbine. At a rate of 19 pounds of steam per k.w. hour, that would produce 5,468 k.w.'s. At the same time No. 1 turbine, operating on the steam delivered to the heating company, would produce 1,500 k.w.'s or better. Therefore, the sum of that produced by number 2 turbine and No. 1 turbine is 6,968 k.w.'s.



*John B. Ink—For Respondent—Cross*

Q. You rounded that into 7,000? A. Yes, sir.

Q. Can you tell me how much electric load you get when the low pressure heating system is not in operation? A. You mean how much power you could generate if you had no steam heating load? A. Yes,

The Commissioner: Is that a periodical situation, or does it happen at all?

By Mr. Miller:

Q. It does happen, doesn't it, that the heat generating plant is not in operation sometimes, even though the facilities are operating? A. The heating company sells heat and steam throughout the year, but in the summer months the demand for steam is very low. Of course, under those conditions you have all the steam available that you could generate, except the small amount that was taken by the steam heating company, and the records indicate that No. 2 turbine will turn out 6,300 k.w's., and No. 1 turbine could be operated at the same time exhausting the atmosphere, and probably produce 1,700 k.w's., making a total of 8,000.

Q. What electric load would you get when the demand of the low pressure heating system is less than 20,000 pounds? A. You would be able to produce the amount that I just stated, about 8,000 K. w's. Number 1 turbine which is used on the steam delivered to the heating company, requires 20,000 pounds or more per hour, and in order to generate,—that is you have to put that much or more through it, to generate any power, but you can exhaust the atmosphere and deliver any amount of steam up to about 80,000 pounds by that unit, and generate its total capacity, regardless of the demand of the heating company.

Q. As a practical operating matter you wouldn't do that? A. In an extreme emergency, because it would not be economical.

Q. What is the minimum electric load that the condensing water will supply? A. You probably mean maximum.

Q. I mean maximum. I want to know whether the maximum electric load that the supply of condensing water will give? A.

*John B. Ink—For Respondent—Cross*

Under the conditions of the minimum flow of the stream that supplies the condensers, the data on the stream flow is rather meager, but as near as I can determine it is probably 10,000 gallons per minute, and the theoretical amount of water required in this condenser No. 2 unit is in the neighborhood of 7,500 gallons per minute. On that basis you could probably carry 5,000 k. w. when you have a minimum stream flow.

Can you tell me the vacuum which you assume on the condensing turbine when you obtain an electrical load of 6,300 k.w.'s? A. I do not have a record of the vacuum under that condition.

The Commissioner: What are you trying to prove Mr. Miller?

Mr. Miller: We are trying to prove just how far the steam plant is used or useful in the generation of electricity for the respondent company.

The Witness: I have some information on that. In March, 1936 during flood the No. 2 turbine carried 5,800 k.w. and the vacuum was 27.1 inches of mercury. As near as we could determine, the water rate at that time was about 18 pounds.

By Mr. Miller:

Q. You stated that test of the steam load on boilers Nos. 1 and 2 was 71,958 pounds per hour for two hours, and you gave similar data for boilers 3, 4, 5 and 6. Will you refer to exhibit No. 3, sheet 1, and tell me when the test was made, when the test started? I want the two hour period of the test? A. Boiler No. 1 carried a fairly constant load from nine in the morning until three o'clock in the afternoon. In other words, we had more than two hours on that boiler. That was the period that was considered in the test.

Q. During what two hours did you test that boiler?

The Commissioner: The witness said it had a fairly constant load, didn't you?

The Witness: Yes, sir; I think it was probably be-

*John B. Ink—For Respondent—Cross*

tween the hours of eleven in the morning and one in the afternoon.

By the Commissioner:

Q. You testified that the test ran from nine to three? A. Yes, sir.

By Mr. Miller:

Q. Did you make the test? A. No, sir. The test was made by the Edison operators.

Q. It was a six hour test and not a two hour test? A. We called it a two hour test because in some of the other boilers it ran for only two hours—

By the Commissioner:

Q. The result of those tests was shown on instruments that are supposed to be accurate? A. Yes, sir.

Q. Those charts are all in the record? A. Yes, sir.

Mr. Miles: I might say that the charts bear the affidavit of the particular person who conducted the test.

By Mr. Miller:

Q. How did you get the figure of 71,958 pounds per hour on boilers Nos 1 and 2? A. If you will refer to the chart on number 1 boiler, you will note on the edge of the chart the following: "Pounds of steam per hour equals chart reading times 5,360." The average chart reading over the period considered to be the test was 6.55. That multiplied by the constant of 5,360 gives the amount of steam produced per hour on number 1 boiler. For number 2 boiler the constant is the same, and the chart reading average for the two hour period is 6.875.

Q. For what two hour period was the chart reading? A. No. 2 boiler, the maximum is between 10:00 A. M. and 12:00 o'clock noon.

Q. Can you refer to sheet number 1 of exhibit No. 3 and give me the corresponding two ~~hour~~ period on sheet No. 1? A. If you take the hours from eleven in the morning to one in the

*John B. Ink—For Respondent—Cross*

afternoon, I believe it is typical, and the average is 6.55, which I just mentioned.

Q. Are those two hours that you used? You have given the result of a two hour test and I want to know what two hours of the day you used? A. I think you can take the hours from eleven to one. On No. 1 boiler the test will be considered between eleven in the morning and one in the afternoon.

Q. Did you actually make any test, or did you yourself take these charts and pick out a period on the chart?

The Commissioner: The witness testified he did not make any tests.

By Mr. Miller:

Q. Was any test actually made or was the chart used?

The Commissioner: What is a chart but a record of a test?

Mr. Miller: He testified that the test was made by the appropriate employees of the company. This chart merely pictures the result.

By the Commissioner:

Q. These so-called charts are the records made by instruments or devices for the purpose of making a test, is that correct?

A. Yes, sir.

Q. These charts therefore show by the fluctuations of the recording device the record of those tests, is that correct? A. Yes, sir.

Mr. Miller: Then they do not support in any way the test over a two hour period because these sheets in exhibit No. 3 show tests over a period of at least six hours, from nine o'clock in the morning until three o'clock in the afternoon, and it is not a two hour test.

The Commissioner: Mr. Miller, I do not understand that it makes any difference if it is two, or four or six hours for the test. If for the period of two hours shown on those cards the result for that particular period was as

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this witness said it was, if that is so, alright, and his testimony is accurate, and if it is not, then it is not accurate.

Mr. Miller: That is why we want to know what two hours on these sheets were used.

The Commissioner: The chart itself, if the calculations are right, is susceptible of bearing out the testimony of the witness as to the two hour period.

Mr. Miller: We want to know what two hour period he used to get this result.

The Witness: I have a computation here now and I think I can give you the two hour period.

By the Commissioner:

Q. On which boiler? A. Number 1. It started at ten and was completed at twelve. That gave me 35,108 pounds. There is practically no difference, however, over the entire six hour period and you would get about the same result if you started at nine and ran until three.

By the Commissioner:

Q. If you would take any two hour cycle in this six hour period you would get the same result approximately? A. Yes, sir.

By Mr. Miller:

Q. On sheet No. 2 of the exhibit the period was from ten to twelve? A. Yes, sir.

Q. Sheet 3? A. It was from 3 to 5.

Q. Sheet 4? A. On sheet 4 it was from 3 to 5.

Q. Sheet 5? A. 9 to 11.

Q. Sheet 6? A. Nine to eleven.

Q. Referring to sheet number 1 of exhibit number 3, can you give me the maximum output of steam? A. The maximum instantaneous output shown on sheet number one would be about 7.25, multiplied by the constant of 5360, and it would be approximately 39,000 pounds per hour.

Q. Can you give me the minimum output? A. The minimum



*John B. Ink—For Respondent—Cross*

instantaneous is approximately four and one half times the constant, or about 22,700. That is an instantaneous swing.

Q. On sheet number 2, how would the maximum output be determined—in the same way? A. Yes, in the same way. We have an instantaneous peak there of 7.4 times the constant.

Q. The only difference in the computation of the maximum and minimum output for the various sheets of exhibit No. 3 would be a difference in constant, would it not? A. The determination of the hourly output consists in determining the average ordinate of this curve, this record curve, over the two hour period, multiplying that by the constant.

Q. Can you give me, not necessarily immediately, but will you prepare a tabulation showing the maximum and minimum output for these various sheets? A. I can produce those figures.

Q. Will you produce them? A. Yes, sir.

(Recess.)

By Mr. Miller:

Q. Do you now have those figures Mr. Ink, for the various sheets? A. Yes, sir.

Q. I wonder if you would read them into the record. I believe you gave me the minimum output of steam for sheet number 1? A. I would like to check that on sheet number 1. The maximum is 38,900, the minimum is 31,100.

Q. I believe you gave me a minimum of 22,700? A. I looked at the wrong place and I would like to correct that.

Q. Sheet number 2? A. Sheet number 2, maximum 39,700; minimum 33,200.

Q. Sheet number 3? A. Sheet number 3, maximum 36,000; minimum 29,600.

Q. Sheet 4? A. Sheet 4, maximum 34,400; minimum 27,200.

Q. Sheet 5? A. Maximum 52,300; minimum 40,600.

Q. Sheet 6? A. Maximum 51,750; minimum 38,800. These are instantaneous swings.

Q. Did you measure the total output of steam from boilers numbers one and two for the two hours by meters? Was the output of 71,958 pounds measured by meters? A. That output



*John B. Ink—For Respondent—Cross*

of steam is determined by integrating this chart, determining the average ordinate of the chart over the two hour period, multiplied by the constant shown on the chart.

Q. Can you tell me how a sustained and continuous load can be carried for two hours or for any period, the load being greater than the minimum quantity which the steam produced will supply? A. These minimum quantities shown on the chart indicate or represent the demand for steam and at that instant, rather than the ability of the boilers to supply the steam.

Q. You stated that the company's all time electric peak load was 18,200 k. w. hours. Can you tell me the time when this peak load occurred? A. The 18,200 k. w's?

Q. Yes. A. That occurred on November 24th, 1936.

Q. Was there any particular reason for that peak? A. I do not think there was anything other than the ordinary reasons that accounts for peaks, at least none that I know of.

Q. What is the k. w. capacity supplied at this time by the Metropolitan Edison Company? A. You mean at the time of the peak load?

Q. No, at the present time. Do you know that off hand, Mr. Ink? A. I do not know it off hand. I think it is the papers somewhere.

Q. Can you get that and give it to me?

The Commissioner: As of today or when?

Mr. Miller: Kilowatt capacity as of today and also as of November 24th, 1936.

By Mr. Miller:

Q. Do you have that latter information, Mr. Ink? A. You want the contribution of the Metropolitan Edison Company to the peak demand of the Edison Light and Power Company in 1936?

Q. Yes, on November 24th.

The Commissioner: Is that the date of the test?

The Witness: That is the date of the peak load. Do

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you want the same information, Mr. Miller, for some day this year?

Mr. Miller: Yes, a representative day, or the peak day in 1937, and similar information as to the k. w. capacity supplied by the Edison Water and Power Company on November 24th, 1936, and a day taken in 1937?

The Witness: I will probably have to go to the Edison Company for these figures in 1937.

By Mr. Miller:

Q. That is perfectly satisfactory, we would just like to have the figures for comparative purposes. Can you tell me the greatest k. w. capacity that has been supplied the Edison Company by the Metropolitan Edison Company? A. No, sir, I have got that information.

Q. Can you get me that information? A. Yes, sir.

Q. And similar information for the Pennsylvania Water and Power Company? A. Yes, sir.

Q. With data showing when it was supplied and for how long a period? A. Yes, sir.

Q. Now, in connection with your testimony I think you stated the all time peak for the electric demand and for the steam heating demand of the Edison Company was January 24th and January 28th, 1936. When you stated that you assumed the peak hour of January 24th, was similar to the peak hour of January 28th, 1936, did you make that assumption? A. I made that assumption. I had to because the records were not complete for the 24th. I had information which showed that the demand for the day on the 24th was the same as that on the 28th.

Q. Well, you assumed, did you not, a relation between the load factor and demand? A. Yes, sir, I must have assumed that, to assume that the demand was the same on the two days.

Q. Referring to sheet number 2 of exhibit number 7, column 1, July, there is a figure of 15,900 k. w's purchased? A. Yes, sir.

(Discussion off the record.)

*John B. Ink—For Respondent—Cross*

By Mr. Miller:

Q. In column number 7 appears 6,210,000 k. w. hours purchased. Now then in column 1 for November, 16,700 k. w. hours are shown, and in column seven 6,190,000 k. w. hours are shown. This indicates an increase of 800 k. w. hours demand and a decrease of 20,000 k. w. hours received, does it not? A. That is between September and November?

Q. Between July and November. The similar figures for September and December show a decrease of 500 k. w. hours demand, and an increase of 18,000 k. w. hours received, do they not?

The Commissioner: Mr. Miller, wouldn't it save time if you would submit this witness, if you have then written out, a list of the questions that require calculation on his part? Perhaps you had better submit those questions to him at this time and have him put them on the record this afternoon.

Mr. Miller: This question does not require any calculation. It involves a subtraction of 16,000 from 16,500.

Mr. Miles: The answer is 500 then.

The Commissioner: I can do that myself.

The Witness: I think I can answer his question. I believe the purpose of this is to show that there is a wide variation in load factors between the month of July and the month of November—

By Mr. Miller:

Q. That is correct, the relations between demand and load factors do vary very greatly from time to time? A. Yes, sir. They would vary between July and November because the character of the load changes very much in those two months.

By the Commissioner:

Q. That is between those two months? A. Yes. The character of the load in June and July is very much different from what it is in November,—different hours of daylight and different hours of operation.

*John B. Ink—For Respondent—Cross*

The Commissioner: Did you answer Mr. Miller's question?

The Witness: Will you please give me the question?

By Mr. Miller:

Q. My question was, as between September and December, a decrease of 500 k. w. hours demand, and an increase of 18,000 k. w. hours received is shown, by reference to columns 1 and 7 of sheet number 2 of exhibit number 7? A. I assume that is correct. I haven't attempted to check the figures.

The Commissioner: Is that apparent from the sheet to which you have referred?

Mr. Miller: Yes, sir.

By the Commissioner:

Q. If the figures, as they are on the sheet are correct, then Mr. Miller's calculation which he asked you about is correct? A. Yes, sir.

By Mr. Miller:

Q. I can give the witness the figures from the exhibit? A. I would like to know what the conclusion is.

By the Commissioner:

Q. I do not think that is quite necessary to find out what conclusion Mr. Miller is trying to reach. He asked you whether a certain set of facts, as shown by that sheet, would inevitably lead to a certain conclusion. Is that correct, or, from your point of view can that not be answered that way?

Mr. Miles: I think in fairness to the witness, no question has been propounded to him.

By Mr. Miller:

Q. I asked you, referring to the similar figure for September and December, on the exhibit, do they not show a decrease of 500 k. w. hours demand and an increase of 18,000 k. w. hours received? A. Yes, sir, I assume that your figures are correct.

*John B. Ink—For Respondent—Cross*

Q. Those comparisons between July and November and between September and December show a wide variation between the demand and the k. w. hours received, do they not, the demand and load factor? A. Yes, they show a variation of load factor. I assume they do.

Q. They also show a variation in the relation between the two, do they not? A. If there is a variation in the load factor it would follow there would be a variation in the relation between the demand and energy.

Q. From those figures would it not appear that to base an assumption that on any given day the peak hour was not far different from the peak hour on another given day, was an unwarranted assumption? A. It would be unwarranted if it were for several months apart, but if they occur in the same week or a few days apart, I will not say it is not warranted.

Q. Referring to the same sheet, will you tell me the day and hour that the 13,900 k. w. demand occurred, that is purchased for March?

Mr. Miles: What line and column are you referring to?

Mr. Miller: Column 1, line 3.

The Witness: I do not have the day and the hour. Pardon me, just a minute, that is March 17th, 9:00 to 10:00 A. M.

By Mr. Miller:

Q. What was the k. w. demand supplied by the Metropolitan Edison Company at that time, do you know? A. I only have the combined. I do not have it segregated.

Q. You mean you just have the total 13,900 k. w's? A. Yes, sir.

Q. Can you get the information and segregation as to the demand supplied by the Metropolitan Edison Company and the Pennsylvania Water and Power Company at that time? A. Yes, sir.

Q. The chance of requiring an electric emergency operation at the time of maximum steam heating demand is remote, is it not? A. Yes, I believe it is.

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*John B. Ink—For Respondent—Cross*

Q. Can you tell me whether the operating practise in connection with the steam heating plant is to have available reserve capacity sufficient to protect the service when the largest boiler is out of service for repairs? A. Boiler repairs are all made during the summer months, at which time there are several boilers available, at least four boilers.

Q. Did you derive that information from the station operating records? A. I derived that from the discussion with the operators.

Q. Do the station operating records show when the boilers were out of repair? I mean out of service for the purpose of repair? A. I don't know whether they show that or not. I think I am safe in saying if there was any failure of a boiler or stoker, that that would be indicated on the boiler room records.

Q. Can you tell me the time of the day when the maximum demand of the steam heating system of 125,255 pounds occurred? A. That is shown on exhibit 4. That was between ten and eleven in the morning.

Q. What boilers were in operation at that time? A. Numbers 2, 3, 4, 5 and 6.

Q. What steam pressure is required for the operation of the low pressure heating system? A. The pressure in the heating system varies. It is normally 25 pounds.

Q. And for the high pressure system? A. The high pressure system, 80 pounds.

Q. How many pounds of steam were produced by the boiler plant in 1936? A. 278,501,000.

Q. Can you tell me how many of those pounds were used for electric generation? A. In which turbine?

Q. In the 5,000 condensing turbine? A. No, I have no record of that.

Q. I assume you cannot tell me how many pounds were used for heating the station, in the operating office and for other uses in connection with the respondent company. You have no segregation of that? A. I have not, no.

Q. Can you get that data or is it unavailable? Do you know

*John B. Ink—For Respondent—Cross*

of any records of the company which would show that? A. I believe that the steam used for heating the plant is metered. I believe that information can be obtained.

Q. Will you get that for me? A. You mean the steam required to heat the plant?

Q. Yes, to heat the station and the offices of the Edison Company. In other words what steam goes for use in connection with the Edison Company?

The Commissioner: Other than the generation of electricity?

Mr. Miller: That is correct, yes, sir.

By Mr. Miller:

Q. And then the total figure. What we want is a breakdown into the pounds of steam used for heating the station and the operating offices, for hot water and other minor uses, in connection with the Edison Company's operation, and in addition to that the pounds used for electric generation, if that information is available? A. I do not think the pounds used by number 2 turbine is available. I believe that is an estimate.

Q. If you can give me an estimate on that, that will be satisfactory.

Mr. Miles: Will you want this witness recalled for all of this various information?

Mr. Miller: No, that won't be necessary, if he furnishes the information in letter form or something of that sort, with the understanding that it can be placed in the record.

By Mr. Miller:

Q. Do you know Mr. Ink, the number of transformers, or, rather transmission circuits of the Pennsylvania Water and Power Company to York? A. Yes, sir; the Pennsylvania Water and Power Company have two 66 k. v. circuits entering York.

Q. What is the transformer capacity for reducing the trans-

*John B. Ink—For Respondent—Cross*

mission voltage to the delivery voltage? A. 12,500 k. v. a. of the Pennsylvania Water and Power Company sub-station.

Q. Who owns the transformers? A. Those are the property of the Pennsylvania Water and Power Company.

Q. Do you know the number of transmission circuits of the Metropolitan Edison Company to York? A. There are two 66 k. v. circuits, and one 23 k. v. circuit, entering Smith Street sub-station, and from that sub-station the Edison Light and Power Company is supplied over two 23 k. v. circuits.

Q. What size wire produces 23,000 volts, did you say? A. The lines between the Central plant and the Smith Street sub-station are 2/0 copper.

Q. Who owns the transformers which are used on the Metropolitan Edison lines? A. They are owned by the Metropolitan Edison Company.

Q. What is their capacity? A. 12,500 k. v. a.

Q. At what time of the day do the daily electric peak demands occur, do you know that? A. Usually between nine and ten in the morning.

Q. Now, you stated that the profit to the Edison Company on the sale of 4,232,300 k. w. hours to the Railways Company in 1936 was \$12,281.00. To arrive at that conclusion you used a rate of 9 mills, did you not? A. Yes, sir.

Q. Thus you bar 1 the cost to the Edison Company of the railway power on the lowest block in the demand charge, and the lowest block in the k. w. h. charge, did you not? A. In determining the cost to the Edison Company for power purchased and used by the Railway Company, we used the increment cost of that power.

Q. What do you mean by that? A. We found out how much per k. w. h. the Edison Company would have paid for the power if they had not had the railway load, then determined the increase, then determined the cost per k. w. h. that they would have paid for the power, including the railway load. The difference between those two costs per k. w. h. would be the increment,—I will have to correct that. We determined what would have been paid for power if they had not had the rail-

*John B. Ink—For Respondent—Cross*

way load. Then the difference between that and what they actually paid was the increment cost for serving the railway.

Q. Well now, Mr. Ink, I do not believe you are answering my question. Did you not base the cost to the Edison Company of the railway power on the lowest block in the demand charge, and the lowest block in the k. w. h. charge? A. The method of arriving at that increment cost involves the use of the lowest block in the demand and energy charged.

Q. If the other consumers of the Edison Company were not attached to their lines, and the Railway Company were the only consumers, that would not be possible, would it?

Mr. Miles: That is objected to.

The Commissioner: I think I will have to sustain the objection. That is not a tenable supposition.

(Discussion off the record.)

By Mr. Miller:

Q. Mr. Ink, the low block demand charge and the k. w. h. charge advantages accrue by reason of the total use of all of the consumers of the Edison Company, do they not? A. Yes, sir.

Q. In exhibit No. 7 a reduction in the average rate for power purchased by the Edison Company is shown. That is due to the increased quantity taken, is it not? A. Yes, sir.

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(Recess until 1:30 o'clock p. m.)

John B. Ink—For Respondent—Cross

AFTERNOON SESSION.

1:30 o'clock p. m.

JOHN B. INK, resumes the stand.

*Cross Examination, continued.*

By Mr. Miller:

Q. I believe you stated that the facilities of the Edison Company located in the Central Station, to supply service to the railways company, also supply Service to the Pennsylvania Railroad and another organization, a private company, is that right?

A. Yes, sir.

Q. Are you aware that the tariffs of the Edison Company, the respondent company, on file with the Commission contain a rate P R, providing for 2,300 volts for lighting service delivered at its power plant, when the customer installs at his own expense in the power house partial equipment necessary to furnish electric current at 2,300 volts, at a rate made up of a monthly service charge of \$75.00, plus a meter rate varying from 4 cents to 1.2 cents per k. w. h.?

A. I am not familiar with that.

Q. Do you know whether or not the Pennsylvania Railroad made a payment under the provisions of this rate for special equipment installed in the Edison Company station?

A. I do not.

Q. Referring to exhibit No. 7, power purchased, will you state where the power purchased from the Pennsylvania Water and Power Company is delivered to the Edison Company, at what point?

A. That is delivered at the Violet Hill Sub-station.

Q. At what voltage?

A. At 13,200 volts.

Q. Where is the power supplied to the Railways Company by the Edison Company delivered?

A. That is delivered at the AC sight of the rotary converters, at the AC site of the rotary converter transformers.

*John B. Ink—For Respondent—Cross*

By the Commissioner:

Q. Where are they located? A. In the Central Generating Station and at a similar point at the other rotary sub-stations.

By Mr. Miller:

Q. What is the distance from the Violet Hill sub-station to the Central Station? A. That is 1.87 miles.

Q. At what voltage is the power delivered to the railways company? A. At 2,300 volts in the generating station, at 13,200 volts at the other rotary stations.

Q. Are the other rotary stations more distant than the central station from the Violet Hill sub-station? A. I think they are, I have got the exact distance but I think they are.

Q. Will you describe the facilities required to convey power from the Violet Hill sub-station to the Central Station, for delivery to the Railways Company? A. The method of operating the Central generating station, 2,300 bus, involves separating that bus into two parts. The part that supplies the rotaries is fed from the Metropolitan Edison Company transformers. Therefore, supplying the rotaries in the Central generating station does not involve the connection between the Central generating station and the Violet Hill sub-station. The separation of that bus in the Central generating station is necessary to prevent overloading the transformers which connect the Central generating station and the Metropolitan Edison Company and the Pennsylvania Water and Power Company. There is a tie line used for exchange of power between the Pennsylvania Water and Power Company and the Metropolitan Edison Company, which would be parallel to the system at the Central generating station, and in case of interruption of that tie line, when large blocks of power are being interchanged between the two power companies, the transformer supplying the Edison Company will be seriously overloaded, and therefore it is necessary to separate these two systems in the Central Generating station. Does that answer your question?

Q. No, I don't believe so. What I would like to know is what



*John B. Ink—For Respondent—Cross*

The Commissioner: I take it that the witness will supply that information.

The Witness: Yes, sir.

By Mr. Miller:

Q. Referring to line 13, sheet No. 1, of exhibit No. 7, you have a figure of \$18,025.00, representing the total cost for power factor correction by condensers. What items go to make up the amount of \$18,025.00? A. That is made up of fixed charges on the equipment, which is \$9,629.00; maintenance cost on the synchronous condensers of \$651.00; the operating cost, which covers labor and energy losses, amounting \$5,874.00.

Q. Can you tell me the number and capacity of the boiler feed pumps in the Central station, that is capacity per hour?

A. No, I haven't that data.

Q. Can you furnish that? A. Yes, sir.

Q. Do you know the power factor of the Metropolitan Edison Company and the Pennsylvania Water and Power Company system, independent of the Edison Power and Light Company?

A. No, sir.

Q. What kind of coal was used during the test on boilers Nos. 1 and 2? A. Anthracite.

Q. That was fed through your ordinary stokers? A. Yes.

Mr. Miller: That is all I have, Mr. Commissioner, with this witness. We anticipated that our cross examination of this witness would consume considerably more time than it has. Therefore, we have no further questions.

The Commissioner: This hearing will be adjourned. These hearings for this week were scheduled for today, Thursday and Friday. As I am unable to advise counsel whether or not hearings will be conducted tomorrow and Friday, I will adjourn the hearing.

Mr. Miles: We would ask your Honor to adjourn these hearings to a date to be hereafter fixed.

The Commissioner: I cannot do that, Mr. Miles be-

*Harry A. Reed—For Respondent—Cross*

cause I have no authority to do so. The only thing I can do is to adjourn the hearing for today.

Mr. Miles: I should like, on behalf of myself and my client, and colleagues, to express our appreciation to the sitting Commissioner for his patience and courtesy.

The Commissioner: Under the present circumstances I am sorry that this hiatus is in order for a moment; but I assure you it is not my fault and I do not see that I can do anything else in the matter.

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Stenographic report of hearing held in the Public Utility Commission Building at Harrisburg, Pennsylvania, Wednesday, May 19, 1937.

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Commissioner BEAMISH, Presiding.

APPEARANCES:

SAMUEL G. MILLER, Esq., Harrisburg, Pa.

For the Public Utility Commission

CLARENCE W. MILES, Esq., Baltimore, Md.

V. K. KEESEY, Esq., York, Pa.

DAVID J. McCaHILL, Esq., Pittsburgh, Pa.

For Edison Light and Power Company

HARRY A. REED, recalled.

*Cross Examination.*

By Mr. Miller:.

Q. Mr. Reed, you stated that the reproduction cost prices under Account 209, boiler plant equipment, were obtained from the Babcock and Wilcox Boiler Company. Will you refer to Page 16 of the reproduction cost appraisal regarding the item of two 600 horsepower boilers appraised at \$83,702? Can you tell me the items that were included in the Babcock and Wilcox

*John B. Ink—For Respondent—Cross*

of the purchase of power, from the condensers, the synchronous condensers in the system, from the capacitors and from the generators which are occasionally operated as synchronous condensers.

By the Commissioner:

Q. What is a kilable ampere? A. A kilable ampere is a product of volts and amperes regardless of the power factor, divided by 1,000.

Q. Or is that your explanation? A. The ratio of the kilable ampere hours to the k. w. hours determine the average power factor of the load.

Mr. Miles: I would like to know what the purpose is of this line of questioning?

Mr. Miller: We want to know the basis for the 67 percent figure of lighting power factor, just how it was arrived at, so that we can determine the accuracy of the subsequent figure in the exhibit as to the value of the Railway load in raising the power factor.

By Mr. Miller:

Q: What was the minimum system power factor, Mr. Ink? A. I could not say. The figure I have used, 67 percent, is the average for the year. I did not break that down into any lesser periods.

Q. Do you know what the total K.V.A. capacity would be that would be required to raise the system maximum load from the minimum power factor to 80 percent power factor? You said you did not know the minimum. A. No, I do not know the minimum.

Q. Taking the average of 67 percent, what K.V.A. capacity would be required to raise the system maximum load from that 67 percent figure to an 80 percent power factor.

The Commissioner: It is 60 percent lagging, as I understand it.

The Witness: Yes, that is right.

*John B. Ink—For Respondent—Cross*

The Commissioner: You mean to an 80 percent lagging power.

Mr. Miller: Yes, sir.

The Witness: Of course, that varies with the amount of the load, and naturally the power factor itself varies. The facilities for correcting the power factor consist of a 2,000 K.V.A. condenser, a 5,000 K.V.A. condenser, and also about twelve hundred K.V.A. capacitors. This much capacity, amounting to 8200 K.V.A. normally holds the load power factor at 80 percent or better. Occasionally it is necessary to operate the 5,000 K.V.A. generator at the central plant to assist in this correction. That would add to this 8,000 another 5,000, making a total of 13,000 K.V.A. that is occasionally required.

Q. The power factor charge adjustment provided for in the purchased power contract is based on K. W. demand. What method did you use in converting the adjustment of K. W. into the k. w. h., used in Exhibit No. 7, sheet number 1? A. The determination of the power factor for billing purposes in the contract is based on the use of the integrated k. w. h., and the integrated reactive kilowatt amperes. That is the same figure that I have used in my calculation.

Q. How did you get the K. W. H. figures in exhibit No. 7, line 11? You have a figure of 8,678,100 k. w. h. as the portion of the load corrected to 80 percent lagging power factor by the railway load. I would like to know how you obtained that figure? A. I obtained that by means of a vector diagram, calculated mathematically—

Q. On what basis? A. One vector consists or one vector represents K.V.A. hours delivered to the Railways Company, with a power factor of 98 percent loading. This vector is therefore known in direction and length or amount. Another vector represents the system load. This vector is known in direction and determined by the power factor. The third vector represents a sum of the Railway load and a portion of the system load corrected to 80 percent power factor.

*John B. Ink—For Respondent—Cross*

The Commissioner: Isn't this all a mathematical engineering formula known to every engineer?

Mr. Miller: No, sir, it is not, according to my information.

The Witness: I think it is quite common knowledge.

The Commissioner: If it is a formula used in practise by every competent engineer I do not see any purpose in putting it into the record. If it is not, that is a different matter.

By Mr. Miles:

Q. The method is a common method? A. Yes, sir; the next step is the addition of the two vectors, one being the vector of the railway load and the other being the vector of the system load, corrected by the railway load.

By Mr. Miller:

Q. What rotary converters are used to supply the power to the Railways Company? A. The rotary converters in the Central generating station and at the three outlying stations.

Q. Do you know the daily production of these machines? A. The daily production of the machine at the Central station is recorded every hour. The isolated stations are unattended, and the meters at these points are read monthly.

Q. Can you give me the average daily operation of the machines at the central station? A. I can give you the total for the year, which divided by 365, would be the average daily operation.

Q. Alright. A. In 1936 the Central plant produced 3,301,900 k. w. h.

The Commissioner: For the average day that would be divided by 365?

The Witness: Yes, sir.

The Commissioner: You do not want to waste any time on that.

By Mr. Miller: Does that give the figure for the Railway Company rotaries?

*John B. Ink—For Respondent—Cross*

A. That is the input to the Railway Company rotary converters at the Central plant, and is about 75 percent of the railway load.

Q. How many k. w.'s can be corrected from 67 percent to 80 percent power factor by the capacity of the machines in the Central station, the railway machines in the Central station, in excess of the capacity necessary to carry the railway load? A. The correction of the system power factor is incidental to the load that is carried, the total load that is carried, by the rotary converter. That is, you can use your rotary converter in the same manner that you use a synchronous condenser or a synchronous motor. That is, you can operate to correct the power factor, this inherent power factor, which is quite high in this case, 98 percent loading, and you can increase the corrective affect of those machines over what they will normally carry or over what they will normally do in the process of carrying the railway load.

Q. In other words, they would be useful in correcting the power factor only up to the point where they were needed to supply the railway load? A. That is right.

Q. They would have no excess capacity for power factor correction? A. That is right.

Q. Do you know what part of the power factor correction is due to the 5,000 k. v. a. turbine? A. I have an estimate of the amount of reactive kilable ampheres carried by the machine in 1936. That figure is 5,528,000 reactive kilable ampere hours.

Q. That would be over a period of a year? A. Yes, sir, that is rather a small percentage of the total reactive, which is 79,697,000.

Q. Can you tell me how many days the 5,000 k. v. a. turbine was operated in 1936, or will you furnish us that figure, Mr. Ink, and also how many hours in the average day it would operate? A. That is hours operation of number 2 generator, for power factor correction?

Q. That is correct.



*John B. Ink—For Respondent—Cross*

facilities are used to take the power delivered at the Violet Hill sub-station to the point or points of delivery to the Railways Company? A. Didn't I just explain that none of that power flows to the Railways Company.

Q. Your answer is that no power is delivered to the Railways Company at the Central station, which comes from the Violet Hill sub-station? A. That is right.

Q. Therefore, any power which is delivered to the Edison Light and Power Company at the Violet Hill sub-station, and is subsequently delivered to the Railways Company, is delivered to the Railways Company at these various other stations you have mentioned? A. Yes, sir.

Q. What facilities in general are used to take that power from the Violet Hill sub-station to the various points of delivery to the Railways Company? A. There are three of these isolated railway sub-stations, one of the Red Lion station which is fed direct at 13,000 volts by a transmission line from Violet Hill to Red Lion. The other two known as Gitts and Martins, are supplied from a 13,000-volt bus at the Central Station, and this power flows from Violet Hill over two 13,200 volt circuits to the Central station, thence over a 13,200 volt circuit to the Gitts and Martins sub-stations.

Q. These facilities are the property of the respondent company, are they not? A. Yes, sir.

Q. Therefore, I assume that all of the operating and maintenance charges, all losses in transmission and transformation, all interest and depreciation on these facilities are carried by the Edison Light and Power Company? A. Yes, sir.

Q. The average cost of power purchased, which you used in exhibit No. 7, is based on cost to the Edison Company at the delivery point to the Edison Company. A. Yes, sir.

Q. So that you gave no consideration to the additional cost accruing in connection with that power, between the Violet Hill station, sub-station, and the delivery points of the Railways Company? A. No, sir.

Q. Do you have the k. w. h. purchased by the Edison Company for 1934? A. I have the purchase from the Metropolitan

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Edison Company in 1934, 13,303,000 k. w. h's.; from the Pennsylvania Water and Power Company, 44,348,600 k. w. h's.

Q. Just to clear up a little bit of your testimony, I believe, in answer to one of my questions as to where the power purchased from the Pennsylvania Water and Power Company is delivered to the Railways Company, you said the Central station and various sub-stations, and then, I believe in a later answer you said that none of that power was delivered to the Central station? A. None of the power that flows over the connection between the Violet Hill and Central generating station is delivered to the railway at the central generating station. The facilities of the two companies from which power is purchased are tied together between Violet Hill and the Smith Street sub-station. So it is impossible to say where the power comes from that is delivered to the Edison Company at the two points enumerated.

Q. Is it delivered to the Edison Company or the Railways Company? A. To the Edison Company and eventually to the Railways Company.

Q. Now, I believe you stated that there was no connection between the Violet Hill sub-station and the Metropolitan Edison Company service, is that right? A. No, I did not intend to state that. There is a connection.

Q. That is shown on exhibit No. 5, is it not? A. No, that exhibit does not show the connection between Violet Hill and the Metropolitan Edison Company. Exhibit No. 5 only shows the connections in the Central generating station.

Mr. Miles: . It is conceded there is a connection?

Mr. Miller: Yes.

By Mr. Miller:

Q. You have shown in line 10 of sheet No. 1, of exhibit No. 7, that the average power factor of the respondent company's electric system is 67 percent lagging. Can you tell me how that 67 percent figure was arrived at? A. That was arrived at by taking the sum of all of the reactive k. w. ampere hours or kilable ampere hours from all sources, that is from the sources

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Company quotation? Can you give that to us later in tabulated form for inclusion in the record? A. Yes, sir, I will be glad to.

By the Commissioner:

Q. Do you have the information, Mr. Reed? A. The information is in this volume. It is in several sections. It will have to be compiled to answer the question directly as Mr. Miller has asked it. It would be much clearer if I could give it in letter form for the record, as he has suggested. We have that information.

Q. Can you get the information, make the examination and get the information during recess and bring it in this afternoon? A. No, sir.

Q. Why? A. It will take more time than we have available to do that. All of the information necessary to answer the question is in the book and I want to check on that.

The Commissioner: Is that agreeable to you, Mr. Miller?

Mr. Miller: Yes, sir.

By Mr. Miller:

Q. Can you tell me the cost of the boilers delivered from the data you have available here?

Mr. Miles: You mean cost as of November 30, 1936?

Mr. Miller: That is right.

The Witness: I think that the answer to that question is \$34,144.

By Mr. Miller:

Q. That is the cost for both boilers? A. Yes.

Q. And not for each? A. Yes, sir, that appears to be for the two.

Q. Do you have the cost of erection on the foundation? A. You mean just the cost of erecting the boilers themselves?

Q. Yes. A. \$4,206.

Q. Do you have the cost of the foundation? A. Complete?

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Q. Yes, complete. You mean with brick work, boiler settings? What do you mean by complete? A. My interpretation of your question would require the structural steel, the excavation, concrete, back fill, brick work, side walls, and so forth: in other words, everything except the drums, the tubes, and the stokers.

Q. I would like the total cost and then I would like you to give me the cost of those items? A. \$5,086.42.

Q. Do you have the cost of the concrete in that figure? A. Yes, sir.

Q. What price per cubic yard did you use? A. \$9.00 for materials; \$6.00 for labor.

Q. How many cubic yards? A. 16.

Q. Can you give me the break down of the \$4,206 figure for the cost of the erection?

Mr. Miles: You are asking, and as I understand it, the break down of the figure of \$4,206?

Mr. Miller: Yes.

The Witness: I haven't a break down on that. The labor for the erection of the boilers solely was generally on a percentage basis.

By Mr. Miller:

Q. You mean that is the item of labor? A. Yes, sir.

Q. Returning to the materials, in connection with the foundation of the boilers, what was the cost used by you for brick work for boiler settings? A. For the red brick the cost of the material alone was \$31.73 a thousand; the labor was \$18.52; for No. 1 fire brick the cost of material was \$83.86 per thousand; the labor was \$20.09; for No. 2 fire brick the material cost was \$77.54 per thousand; the labor cost was \$20.09.

Q. Does that include mortar for the brick or did you figure that separately? A. I believe that includes the mortar.

Q. What was the cost of the stokers for those two boilers, the delivered cost used by you? A. \$17,302.

Q. That is for both of them? A. For the two stokers, yes, sir.

Q. Do you have the total brick work cost? A. No, I can add up those figures and give it to you. Shall I do that?

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Q. The figures you gave me were for various classes of brick?

A. Yes, sir, I have the totals by classes also, separated as to material and labor. I can add those two together.

Q. How many thousand brick did you figure on? A. 37,794 red brick; 17,139 No. 1 fire brick; 9,733 No. 2 fire brick.

Q. I am sort of hopping around, but what was the cost of installation of the stokers? A. \$972 each or a total of \$1,944.

Q. Will you refer to page 15 of the appraisal? I direct your attention to two items of two 520 horsepower boilers. Can you tell me the items in the appraised amounts of \$74,693 and \$62,489 that were included in the Babcock and Wilcox Company quotation? A. I will have to give you that answer at the same time with boilers Nos. 5 and 6.

Q. That will be satisfactory. Did you apply the same prices for erection, foundation and brick work as used in connection with the two 600 horsepower boilers, when you appraised the 520 horsepower boilers? A. You mean the same total prices or the same unit prices?

Q. The same unit prices. A. The same unit prices apply on brick work, excavation, concrete. The answer is, yes.

Q. Will you give me the totals for the 520 horsepower boilers, the totals of the erection, foundation and brick work cost? A. I am referring now to boilers 3 and 4. The cost of erection of the boilers only is \$3,772.

Mr. Miles: For the benefit of the sitting Commissioner may I inquire whether that is not the units of property that under your theory of this case should be excluded from the valuation thereof.

Mr. Miller: That is correct, Mr. Miles.

Mr. Miles: I take it that the purpose of this cross examination is only to test the prices in the event that this property is included in the valuation?

Mr. Miller: That is correct.

The Witness: The cost of material included under brick work, the foundation is \$3,750.65; the labor applying to the same material is \$1,380.08; the total for material

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and labor is \$5,130.73. You asked me for the same information on boilers 1 and 2; did you not?

By Mr. Miller:

Q. Yes. A. The cost of materials for the brick settings and foundations is \$3,004.37. The cost of labor estimated for installing these materials is \$1,297.20.

Q. What is the cost used for the Coxe Stoker delivered? A. Boilers Nos. 1 and 2, the cost of the stokers delivered is \$13,454.

Q. For Nos. 3 and 4? A. There are no Coxe Stokers for 3 and 4.

Q. Were they the Roney Stokers? A. Yes, sir.

Q. What was the delivered cost of them? A. \$5,122.

Q. For the two? A. Yes, sir.

Q. Can you give me the cost of the installation of the Coxe Stokers, the cost of installation of the two Coxe Stokers? A. The cost of installation for the two Coxe Stokers under Boilers Nos. 1 and 2 is \$2,524. The cost of installing the two Roney type stokers under boilers Nos. 3 and 4 is \$96.

Q. Referring to page 18, under Account 209, you will see two boiler feed pumps appraised at \$6,386. Will you give me the cost of those pumps delivered?

Mr. Miles: Mr. Miller, in all this series of questions you are propounding to the witness, where you ask for cost, I take it you mean reproduction cost as of November 30, 1936?

Mr. Miller: Yes. The cost delivered, which he applied.

The Witness: Your question was for the cost of the Epping Carpenter Company—

By Mr. Miller:

Q. For the two boiler feed pumps? A. The delivered price for those two boiler feed pumps is \$5,042.



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Mr. Miles: We merely want to keep the record perfectly clear here because you used the word "cost" and "value" interchangeably. These questions that you are propounding to Mr. Reed relate to its estimates of reproduction cost as of November 30, 1936 of the specific units with respect to which you are questioning him, is that right?

Mr. Miller: I want to know what figures he used to arrive at his estimates. When he appraised the two boilers, the boiler feed pumps, for example, at \$6,386, I want to know the delivered cost of the pumps.

Mr. Miles: The point is he did not appraise it at that. That is his estimate of reproduction cost of those units.

By Mr. Miller:

Q. Taking the one boiler feed pump with your reproduction cost appraisal figure of \$3,778, will you give me the delivered cost used by you for this pump?

The Commissioner: Before the question is answered, let us see if the witness understands the point of view raised by the respondent in this case. You are testifying now as to the reproduction cost as of November 30, 1936, are you?

The Witness: Yes, sir, that's correct.

The Commissioner: And not as to the actual cost?

The Witness: That is right.

The Commissioner: Or as to the value?

The Witness: Or as to the value.

(The previous question on the record read by the stenographer as follows: "Q. Taking the one boiler feed pump with your reproduction cost appraisal figure of \$3,778, will you give me the delivered cost used by you for this pump?")

The Witness: \$3,028.

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By Mr. Miller:

Q. Under Account 210 you have a figure of \$15,585 for condenser, which you stated was based upon a quotation obtained from the manufacturers. What was the delivered quotation?

A. The delivered cost as of November 30, 1936 is \$12,362.

Q. Referring to page 26 of the appraisal, Account 211, item 1, 5000 k. v. a. turbines, what is the delivered cost of that turbine?

A. The estimated cost as of November 30, 1936 is \$84,050.

Q. On what did you base your estimate? A. From the Westinghouse Electric and Manufacturing Company, \$83,800 f. o. b. Essington Factory, plus freight of \$250 to York.

Q. Then it was their estimate? A. That is correct.

By the Commissioner:

Q. I believe you stated it was a quotation? A. That is correct, a quotation received from the Westinghouse Company.

By Mr. Miller:

Q. What was the cost used by you for the foundation of that turbine? A. \$1,517.60.

Q. The cost of installation? A. Installing the turbine unit, you mean?

Q. Yes, for the 5000 k. v. a. turbine? A. \$3,352.

Q. Referring to the 2500 k. v. a. turbine, what was the delivered cost figure used by you on that? A. We used Westinghouse Electric Manufacturing Company's quotation of \$42,800, f. o. b. factory plus \$139 for freight. The delivered price is \$42,939.

Q. Your foundation cost figure? A. \$908.64.

Q. What was the delivered cost of the condensing equipment for the 2500 k. v. a. turbine? A. There is no condensing equipment for the 2500 k. v. a. turbine. It is non-condensing.

Q. Mr. Reed, there was originally condensing equipment on that turbine, was there not? A. Oh yes, as originally installed it included condensing equipment.

Q. You have included in your appraisal no condensing equip-

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ment? A. No, sir, there is none. It is not now designed to operate as a condensing turbine.

Q. Was your quotation from the Westinghouse Company based upon the original condition of the turbine or without the condensing equipment, as it existed in November of 1936? A. With the turbine as it existed as of November 30, 1936.

Q. Will you refer to Account 207, page 4 to 13? You will find an item of concrete, \$7,677. What is the cost per cubic yard used for that item? A. That item is made up of about twenty sub-items at varying costs per cubic yard. Shall I read them all into the record?

Q. Can you give me the total number of cubic yards? A. No, sir, because part of this work is taken off in cubic yard, part of it in lineal feet, and part of it in square feet, I can give you the figure for those that are in the basement floor, which is 18 inches thick. There are 50 cubic yards of concrete, and the material cost is \$8.30, and the labor cost is \$1.82, making a total of \$10.12 per cubic yard. There is 114 cubic yards of 24 inch floor, with a material cost of \$8.08, a labor cost of \$1.77, or a total cost per cubic yard of \$9.85. Those are the items in this estimate that are expressed in cubic yards.

Q. There is a figure of \$7,391 for brick. Can you give me the quantity of brick and the cost per thousand for laying? A. Including material?

Q. Yes. A. There are 202,500 common brick. The material cost is \$20.00 per thousand; the labor cost is \$16.50 per thousand, or a total of labor and material cost of \$36.50 per thousand brick in place.

Q. On your excavation figures what cubic yard cost did you use for earth excavation? That is in the structures account. A. As I recall, that varied in different places. If you will refer to the turbine which we have recently been discussing, for hand excavation the cost is 80 cents per cubic yard; the cost of machine excavation is 43 cents per cubic yard.

Q. Did that vary as between rock and earth? A. Yes, sir, rock excavation is \$2.50 per cubic yard.

Q. Is that additional or is that inclusive of the earth excava-

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tion figure? A. For rock excavation only, \$2.50 per cubic yard, for all rock excavated. Where there was earth only in the trench, the cost would be 80 cents per cubic yard. We have classified the type of material on which we were working.

Q. Referring to page 5, I assume that those unit prices given me were applied to the item on page 4? A. Yes, sir.

Q. Referring to page 5, will you tell me if the same unit costs were applied for the item on page 5, that is, with the comparable item of concrete, brick, steel and excavation on page 5? A. For earth excavation and rock excavation the prices are the same. There is a variation in the prices per cubic yard of concrete from those given for the turbine room on page 4.

Q. Will you give me the unit prices on the concrete for page 5? A. They will vary between \$10.66 per cubic yard and \$33.35 per cubic yard.

Q. Can you give me the quantity of concrete, the total quantity? A. I don't have it. We have broken that up into various classes of concrete. Part of it is expressed in lineal feet, part of it in square feet and part of it in cubic yards.

Q. Can you give me the figures for brick, the quantities and the unit costs? A. There are 250,700 common brick, for which the material cost is \$20.00, and the labor cost is \$16.50, or a total of \$36.50 per thousand brick in place.

Q. Referring to page 6, did you use the same unit costs for excavation as on page— A. I have been under a misapprehension. These answers I have been giving refer to those items on page 6. Had you been referring to page 5?

Q. I was referring to page 5. Will you turn back to page 5? A. That is under the heading of the old boiler room on page 5?

Q. Yes. A. Hand excavation for earth on page 5 appears at two different unit prices. For ordinary excavation it is 80 cents; for tunnel excavation it is \$1.25 per cubic yard; for rock excavation it is \$2.50 per cubic yard.

Q. Can you give me the quantity of rock excavation that you figured in that? A. Yes, sir, 141 cubic yards.

Q. Will you give me the brick figure and the concrete figure? A. There are 121,200 common brick at \$36.50 per thousand in

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cheaper than hemlock on the market? A. I will have to check up on these prices to see. I should have said it was fir and spruce rather than hemlock.

Q. No hemlock? A. I do not think I am figuring any hemlock in this.

Q. You used either fir or spruce in all your forms in this work? A. I believe that is correct, sir.

Q. Do you know what the thickness of these boards were which were used on those forms? A. One inch matched and dressed. That is for the form work alone.

Q. Is the matching and dressing of any extraordinary character, or is it rough matching and dressing? A. It is the ordinary mill output of matched and dressed timber.

Q. What is your quotation on fir per square foot? A. I believe we used \$38.00 a thousand.

Q. Using that for square feet, what do you find? A. 3.8 cents per square foot.

Q. Three and four-fifth cents a square foot? A. Yes, sir.

Q. Will you tell me how you arrive at a cost of, say, 25 cents a square foot for the material for which you paid three and four-fifth cents? A. The material about which we have been talking is only a part of the material that is used.

Q. What else is used? A. Vertical and horizontal bracing, two by four timber. Some of it is two by six, some of it is four by six.

Q. What wood is used in those braces? A. It was spruce.

Q. What are the dimensions of those braces? A. They vary anywhere from two by four inches up to and including four by six inches.

Q. What is the quotation on lumber of that dimension? A. That will run between \$40.00 and \$45.00 per thousand.

Q. Reduced to lineal feet or square feet— A. Four to four and a half cents per square foot.

Q. Have you any other material in your forms besides these two types of cut lumber that you have described? A. No other type of lumber, no, sir.

Q. Is there anything else? A. We have braces.

*Harry A. Reed—For Respondent—Cross*

Q. What do you mean by braces? A. Diagonal pieces of wood, sometimes metal, for supporting the wall, to hold it in a rigid position while the concrete is being poured.

Q. Is it metal or wood? A. Some of it is metal and some of it is wood.

Q. If it is metal it would have to be milled and shaped? A. No, sir, in some of this work we use pieces of props as struts to hold up the wall. I was answering your question particularly as to how these walls can be supported.

Q. You are talking about forms? A. Yes, sir.

Q. Did you in making your estimate of 20 to 25 cents a foot include nails and other material? A. Yes, sir.

Q. You have described exactly the type of lumber that went into these forms? A. Exactly the type of lumber that we estimated, we used in building.

Q. You have included also in your estimate nails and iron pipings that were used as struts for braces? A. Yes, sir.

By Mr. Miles:

Q. Your estimate also includes labor, doesn't it? A. Yes, sir.

By the Commissioner:

Q. You do include labor in your 20 to 25 cents a foot? A. Yes, sir, the labor of placing and the labor for removal of forms after they have served their purpose.

Mr. Miles: I take it there is a certain amount of waste, which will run about 15 to 20 percent.

By Mr. Miller:

Q. Do you include waste in your price per cubic foot? A. Yes, sir, that is one of the places we can use it.

Q. Approximately how much of the concrete work on this plant was rough concrete, and how much finished concrete? A. May I have your definition, Mr. Miller, of finished concrete? It is used specifically in some cases. I do not know exactly



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how to answer your question. For example, a floor slab, some of it is referred to as finished concrete, as opposed to rough concrete.

Q. I am thinking primarily of the walls. You would require a smooth surface of form for finished concrete, but you could use a rough surface form for what I may refer to as rough concrete? A. At a higher cost.

Q. No, the cost would be lower. A. Actually the cost of matched and dressed lumber delivered to a job is less than rough lumber.

Q. That seems impossible. A. It does seem paradoxical but the reason is that the cost of dressing the lumber is only a fraction of the saving in freight in the volume of lumber shipped.

Q. Even so, that cost, however small, would be added to the rough lumber cost? A. Yes, you have a higher freight rate for the rough lumber than you do for the dressed lumber.

Q. Your one inch rough boards will stack one inch, and when you are buying matched and dressed lumber the actual thickness is seven-eighths of an inch? A. Yes, sir, but you can stack a great many more boards per car of dressed lumber than you can of rough lumber. The saving in freight offsets the cost of matching and dressing, so that in estimating today it is very rare that a contractor ever figures on anything but dressed lumber for his form work.

By the Commissioner:

Q. What is the practice generally in building forms? Is hemlock ever used? A. Not very much any more, but it has been.

Q. Have you used hemlock? A. Yes, sir, 25 years ago.

Q. What is the difference in cost between hemlock, fir and spruce? A. I have no quotations at the present on hemlock.

Q. What is your impression? A. I had no occasion to use hemlock for a great many years.

Q. Referring again to the wooden braces, what proportion of the construction is the bracing? A. I will answer your question this way, that for every square foot of wall we estimate three square feet of timber.

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Q. Your estimate is that the wood used in that construction will be used two and a half times? A. Some of it, yes, sir.

Q. Is there any difference between the cost of fir and spruce? A. Very little.

Q. For every square foot of fir or spruce that would cost you three cents you would use that two and a half times? A. After giving allowance to waste in making the forms.

Q. You are making that allowance in your estimate? A. Yes, sir.

Q. You would use that three cent square-foot two and a half times? A. 3.8 cents.

Q. Three and four-fifth cents? A. Yes, sir.

Q. You would use that two and a half times? A. Yes, sir.

By Mr. Miles:

Q. Can you tell us why hemlock is no longer commonly used for work of this character? A. First of all it is rather scarce, it warps and cracks in use when exposed to the sun.

By the Commissioner:

Q. Fir and spruce are fairly common? A. Yes, sir.

By Mr. Miller:

Q. Referring to Exhibit 8, Account 209, boiler plant equipment, will you tell me the percentage applied to the various items to make up the accrued depreciation of \$57,105? A. We have applied 17 percent for accrued depreciation on boilers Nos. 1 and 2, 15 percent on boilers Nos. 3 and 4, 15 percent on boilers Nos. 5 and 6, 15 percent on coal spouts and gates from the coal bunker; 15 percent for one forced draft fan; 15 percent on a second forced draft fan; 10 percent on a Hagan master controller; 10 percent on the balance draft installation; 10 percent on the Mason damper regulator; 15 percent on steel boiler breechings; 15 percent on steel walkways and platforms; 15 percent on both boiler feed pumps; 15 percent on one feed water heater; also 15 percent on the feed water treatment equipment.

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of property only, it would not. However, in this case we are not dealing with a single unit of property, we are dealing with a property in its entirety, and also going out of service, as I have suggested, in possibly six months, is an unusual hazard. It is obsolete in the entire accrued depreciation figure rather than in a specific amount for an individual item of property.

Q. Then do I understand that you have made no attempt to estimate the remaining useful life of these various items of property? A. I know of no way of ascertaining it.

Q. In computing your depreciation you have not attempted to estimate the remaining useful life of the items on which you have estimated the accrued depreciation, is that correct? A. That is correct.

Q. Account 207 of Exhibit No. 8, will you give me the percentage applied to the various structures in that account, to make up the accrued depreciation figure of \$73,984? A. In Account 207, turbine room, we have estimated the depreciation, the accrued depreciation, at 2 percent.

Q. What is the age of that room? A. Approximately 23 years, I believe.

By Mr. Miles:

Q. That is just the building you are talking about without any of the equipment installed, is that right? A. That is correct. That is all covered.

By Mr. Miller:

Q. As to the old boiler room, can you give me the percentage you used on that? A. 10 percent for accrued depreciation.

Q. What is the age of the old boiler room, the structure alone? A. It was built in varying periods from 1897 to 1936. The main boiler structure, however, was built in 1920. I believe that is the year of the greatest investment in dollars. As to the new boiler room structure, the new boiler structure, we have estimated the accrued depreciation at 2 percent.

Q. What is its age? A. Approximately twenty years.

*Harry A. Reed—For Respondent—Cross.*

Q. What percentage did you use to determine the accrued depreciation of the rotary room structure? A. 2 percent.

Q. What is its age? A. That was built in varying periods, from 1897 to 1934. It is difficult to refer to the age of the room as a whole. Most of it has been in over 20 years.

Q. Referring to Account 211, will you give me the percentages applied to arrive at the accrued depreciation figure of \$28,248?

A. Account 211, 4000 k. w. turbine generator, we have estimated the accrued depreciation at 20 percent of its reproduction cost new.

Q. How old is that? How long has it been installed? A. About 21 years.

Q. There is another turbine under that account? A. Yes, sir. The 2000 k. w. turbine, we have estimated the accrued depreciation at 15 percent.

Q. How old is that? A. That was installed in 1911 and rebuilt in 1930-31.

By the Commissioner:

Q. Was it completely rebuilt? A. No, sir, only in part.

Mr. Miles: Only such parts as were worn out. It was rebuilt to meet a changed condition of operating.

By the Commissioner:

Q. What would you say its useful life has been, taking into consideration that factor of rebuilding? A. The original turbine was installed in 1911, which would give it 26 years for the original unit. The original unit was rebuilt to meet a changed condition of operating in 1930-1931. In that state, which is the way it exists today, it is about six years old.

By Mr. Miller:

Q. In course of its rebuilding in 1930-1931, was it reduced in generating capacity, electric generating capacity? A. I believe it was reduced in electric output.

Q. And the changing condition which you refer to as the cause of the rebuilding was a condition which made it advisable

*Harry A. Reed—For Respondent—Cross*

place, the material and labor prices being the same as those I have previously given. -

Q. Are your concrete unit prices similar to those stated by you for page 6? A. They vary from \$10.66 per cubic yard to \$31.60 per cubic yard.

Q. Where would the thirty-one dollar price apply? A. It applies to 5.4 cubic yards of concrete reinforced, 6 inches thick in the walls, and the increase in price over the whole figure is due entirely to the inclusion of form work. In other words, we are figuring in our unit price the finished product which includes the material, the reinforced steel, plus the wood forms that are necessary. There is a very small amount of form work per cubic yard. There are other areas where the form work may be five or ten times as much per cubic yard, and the unit price per cubic yard on the finished product increases as the amount of the form work per cubic yard increases.

Q. On this \$31.00 concrete work, those forms must have been exceptional? A. The forms are not exceptional. It is simply the fact that you are dealing with a thin section of wall, 6 inches thick, with forms on either side of it.

Q. Why would that increase the cost per cubic yard? A. I may explain it this way: A cubic yard of concrete placed in a 6 inch wall equals 54 square feet of wall, in other words, 6 inches thick, 27 cubic feet, and the cubic yards would give you 54 square feet of wall, and 54 square feet of wall will have 108 square feet of form work. The form work would cost between 20 cents and 25 cents per square foot. Therefore, your form work, in a 6 inch wall, will cost you between \$20.00 and \$26.00 per cubic yard alone, plus approximately \$10.00 for the base cost of the concrete material. That will give you a total cost for the finished concrete in that wall of a price over \$30.00.

By the Commissioner:

Q. Your form work is the building of a wooden form? A. Yes, sir, the building of a wooden form.

Q. You include in that cost 20 cents per square foot? A. It varies between 20 cents and 25 cents.

*Harry A. Reed—For Respondent—Cross*

Q. A square foot? A. Yes, sir.

Q. That includes the cost of lumber? A. Yes, sir.

Q. And the manual work of nailing it together? A. Yes, sir, and taking it down.

Q. You use that lumber over and over, don't you, in form work? A. You can use it from two to two and a half times on the average job. We have estimated on that basis.

Q. Your estimates cost of 20 to 25 cents a square foot contains in it the estimate of using that over two and a half times? A. In some cases two and a half times, in others two, depending upon the kind of work. We have attempted to vary the unit cost for materials according to the type of work being put in.

Q. You do not use the lumber more than, say, three times, do you? A. It is uneconomical on power station work.

Q. Why? A. Because you don't have a duplication of the same kind of work, in a power station as in the ordinary loft type of industrial buildings, where the concrete work is similar, and the form work can be used as many as five times before the lumber is eventually destroyed. But in power house work everything is custom built and we do not have the opportunity for repetition of use.

Q. You have pillars that are part of your form work, concrete pillars? A. Very few of them in this power station. There are some below ground. Above ground it is all structural steel.

Q. You say you include in this estimate given by you the use two and a half times of lumber? A. Yes.

Q. I am asking you what would be the cost if the forms were only used once? A. The material cost would be from 6 cents to 8 cents per square foot higher.

Q. Are you talking about in your estimate materials— A. Material and labor.

Q. What would be the combined material and labor estimate if the form were only to be used once? A. For similar kind of concrete it will probably be around 33 cents.

Q. What kind of timber is tabulated in your estimate? A. Mostly fir and hemlock.

Q. Is that the cheapest kind of timber? Is there anything



*Harry A. Reed—For Respondent—Cross*

Q. Did you mention stoker equipment? A. I haven't come to that yet. I beg your pardon, Mr. Miller, the percentages that I have given you for the boiler depreciation is a complete boiler unit installed, and all of the appurtenances that make up a complete operating boiler unit.

Q. What factor of obsolescence did you apply in arriving at your depreciation of percentages, for boilers 1 and 2, for example? A. I haven't applied any particular percentage for obsolescence.

Q. Isn't obsolescence the major factor in depreciation? A. It is in certain types of equipment. As a general statement I cannot go along with you.

Q. Is it in connection with boilers 1 and 2? A. Obsolescence is one of the predominant factors that I feel exists in the accrued depreciation we have found in the boilers in the Edison Light and Power Station. I have assigned no specific percentage for obsolescence alone.

Q. How long have boilers 1 and 2 been installed? A. They have been installed over two years.

Q. They have a depreciation of only 17 percent? A. Yes, sir.

By the Commissioner:

Q. Pardon me, before we pass away from this matter of forms, you recognize that has about a foot in linear measurements? A. Yes, sir.

Q. Reducing what you testified to to its elementals, would you say that your figures would result in a cost of \$1.25 for the making of a box one foot square as to its bottom and as to its four sides, using your figure of 25 cents a square foot, with iron braces at the corners of the boxes? A. I wouldn't build a box that way.

Q. Would you say that \$1.25 would be a fair price for the building of such a box? A. You mean a box to be used for reinforced concrete work? A. No, just the box. Suppose you were required to build one hundred boxes or one thousand boxes, would your figure hold good then, that it would cost \$1.25 a box,

*Harry A. Reed—For Respondent—Cross*

figuring lumber, figuring braces, figuring nails, would you say that was a reasonable price? A. No, sir, the price that I have mentioned for form work has no place in the construction of the price for a box.

Q. Would it be costlier to build the form than to build the box? A. Yes, sir.

Q. Why? A. Some of our form work is 60 feet in the air and you have to have scaffolding—

Q. Then it is the cost of ladders or scaffolding that would make the difference? A. The cost of scaffolding enters into it.

By Mr. Miles:

Q. I presume your forms have to be air tight, don't they, or water tight? A. They have to be water tight at least, so that the fluid in the concrete mixture will not run through.

By Mr. Miller:

Q. On the basis of 17 percent accrued depreciation in 20 years on boilers one and two, they would last how many more years? A. Maybe only six months. There is no relation between the two.

Q. Your accrued depreciation reserve would not replace the boiler at the end of its useful life, or would not permit the replacement of the boiler at the end of its useful life?

Mr. Miles: I would like to know if counsel is talking about the estimate of accrued depreciation?

By Mr. Miller:

Q. I am talking about the accrued reserve for this particular piece of property on the 17 percent basis and the 20 year life, if the remaining life of six months, if that suggestion should turn out to be the fact, my question is, Mr. Read, whether or not the accrued depreciation on this item, and the reserve set up under that percentage of accrued depreciation, if that has been used, would that permit the replacement of the property at the end of six months? A. If you were dealing with the single unit

*Harry A. Reed—For Respondent—Cross*

to rebuild this turbine so that it could generate steam more easily, is that correct? A. Not generate steam, so that it could more economically use the steam in the station.

By the Commissioner:

Q. There is an estimated cost of repairs of how much? A. \$8,154.

Q. What was the original cost? A. \$27,817. They were not necessary repairs, Mr. Commissioner. They were a re-design.

Q. What do you say, taking into consideration the rebuilding, the age of the turbine, is your estimate? A. The turbine as rebuilt is over six years old. Part of it is twenty-six years old.

Q. What is your estimate then as to that piece of machinery with reference to its actual age? A. You mean considering the actual age of the piece of machinery that was built in various periods?

Q. The age would be as old as its weakest link? A. That might well be true.

Q. It might well be that the true depreciation of this piece of machinery would be 26 years? A. Not if you apply your conception of age because the weakest link in the machine was the part rebuilt in 1930.

Q. You said it might well be 26 years? A. It might well be. That was in answer to your question as to the weakest link.

Q. What is your estimate as to the accrued depreciation of that piece of machinery? A. 15 percent of its reproduction cost.

By Mr. Miller:

Q. Are there any other items under Account 211? A. Yes, sir, there is a Westinghouse turbine generator exciter set, for which we have estimated the accrued depreciation as 15 percent of the reproduction cost as of November 30, 1936.

Q. How old is that? A. 26 years.

Q. Are there any other items? A. There is a small item of \$86 for a mercury column vacuum gauge. On this we estimated the accrued depreciation to be 10 percent of its reproduction cost. That completes Account 211.

*Harry A. Reed—For Respondent—Direct*

Q. Will you give me the percentages applied to the various items of property to make up the amount of \$47,141 accrued depreciation? A. That is in Mr. Favor's account.

The Commissioner declared a recess until 1:30 o'clock p.m.

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*AFTERNOON SESSION.*

HARRY A. REED, recalled.

*Direct Examination.*

By Mr. Miles:

Q. Mr. Reed, referring to Account 209 in Respondent's Exhibit No. 2, which relates to the reproduction cost of the boiler plant equipment, I will ask you to refer to page 16 of that exhibit and state to the Commissioner by reference to your work sheets all of the factors considered by you in arriving at your estimate on the accrued depreciation on those two boilers? My question relates to boilers Nos. 1 and 2. A. My first consideration was the fact that these two boilers were both used and useful in our judgment at the time we made the appraisal.

Q. By that you mean that they were used and useful in the rendition of the service and business of this company? A. Yes, sir, we examined the boilers, determined to what extent wear and tear had in any way impaired the efficiency of the boilers, or what effect they might have on their usefulness in service. We considered the type of boiler. By that I mean, its engineering characteristics as to pressures, and so forth, in comparison with the more recent type boilers which are being currently used in electric power stations, as a measure of any obsolescence due to the changes in the art. We also considered whether these boilers were adequate for the service that they were called upon to render. Taking all these things into consideration, together with our understanding through investigation of how many years they had been in service, we felt and still feel that an allowance

*Harry A. Reed—For Respondent—Direct*

of 17 percent of the reproduction cost as estimated by us for this installation represented in dollars the amount of accrued depreciation in those boiler units as of that date. When I use the term "boiler units" I include all of the elements, mechanical and otherwise, that enter into a complete operating unit, which includes boilers, stokers and all other minor accessories that are necessary for a boiler to function.

Q. Will you tell us whether any recent tests have been made by the company as to the operating efficiency of these boilers? A. Yes, sir.

Q. What was the nature of them? A. Tests were made on each bank of boilers in the power station, and these tests indicate very conclusively in my mind that there is very little loss in efficiency and economy in all these boilers throughout the twenty or more years of age, as compared to the rated capacity of the boilers at the time they were purchased. In other words, they are still able to produce very close to the rated capacity as stipulated in the original purchase contract.

Q. Mr. Reed, does not the policy of a given company with respect to the maintenance of the property of this character have a marked effect upon the extent to which such property may be depreciated? A. It has a very decided effect.

Q. In other words, one unit of property might be five years old and have been poorly maintained, and depreciated more than a similar unit at 15 years old properly maintained? A. Yes, sir, that is correct. It is also possible that a machine in your illustration of 5 years of age, not properly maintained, can have passed the stage where it can be restored. In other words, the deferred maintenance has represented a permanent depreciation factor.

Q. Is there any development of the art, so to speak, respecting a method and design of boilers of this character, that indicates any probable immediate obsolescence with respect to these particular units which are owned and operated by the Edison Company? A. Not these units devoted to the service which they are now rendering.



*Harry A. Reed—For Respondent—Cross**Cross Examination.*

By Mr. Miller:

Q. Do you mean that they might be devoted to some other service than that they are not now rendering and might become obsolete for that reason? A. I can visualize types of service where these particular boilers in my judgment would not be recommended; changes in the art and improvement in boilers for certain purposes would be more adaptable for that class of work. For this particular type of service I do not think that the changes in the art have brought out the boilers that I would recommend over and above those already there.

By Mr. Miles:

Q. If it were a base load station, as distinguished from an emergency or stand by plant, is that what you mean? A. Yes, sir.

By Mr. Miller:

Q. Is there any intention on the part of the company to place these boilers in a base load station? A. I know of none.

Q. As I understand it, although you testified that age was not the major factor in your determination of the accrued depreciation, you did take age in connection with each class of property in arriving at an accrued depreciation figure? A. I always try out certain elements in depreciation, primarily as a warning of what to look for, not necessarily as a measure of any change that may have taken place, but as a warning to look for to see whether hidden things have influenced the deterioration in that unit.

Q. You would take age into consideration in determining accrued depreciation, but I believe your thought is that age would be used to determine a proper annual allowance for depreciation, but that the remaining life cannot be used to determine the proper allowance for annual depreciation, is that right? A. I have always considered the remaining life to the extent that the company policy indicates the continuance in service of the units of property. I have no evidence, however, as to how long



*Harry A. Reed—For Respondent—Cross*

that policy will last. Therefor, I am unable to say how long the remaining age of any particular item of property is, and that cannot be determined in my judgment until the management has decided when that piece of property is going out.

Q. How would you estimate the annual depreciation? A. I haven't made any studies on that question.

Q. Your figure for accrued depreciation on boilers Nos. 1 and 2 was 17 percent. Your basis for determining the accrued depreciation was rather general, Mr. Reed. Can you tell me how you arrived at a specific figure of 17 percent? A. That is purely a mental process, taking into consideration the various elements which I have said I included in the accrued depreciation, mentally evaluating each one, wear and tear, obsolescence, inadequacy and so forth, using the percent figure as a means of expressing the dollars of accrued depreciation, which I believe to exist in the particular unit.

Q. Another engineer equally as competent might arrive at 10 percent? A. That is true.

By Mr. Miles:

Q. Is it true that it is always an estimate? A. It is always an estimate, nothing else.

Q. It is a matter of judgment? A. Yes, sir.

By the Commissioner:

Q. Mr. Reed, waiving for the moment the esoteric and highly technical features on this question and the manner in which you arrive at your estimate of 17 percent as to the amount of depreciation, if you were employed to advise a company who hired you to purchase units, would you advise the purchase of boilers A and B, with their appurtenances, at 17 percent less than the par value outlined by you in your examination in chief?

Mr. Miles: As I understand it, the question is whether Mr. Reed would advise the Edison Light and Power Company with respect to the installation of the same boilers?

The Commissioner: If these were in the market.

Mr. Miles: If they were in the market, would he advise

*Theodore E. Seelye—For Respondent—Cross*

them to buy these boilers?

The Commissioner: At the price named here, less 17 percent.

Mr. Miles: The exhibit which is under examination here is not an exhibit relating to any problem of prudential investment or secondhand value, but is an effort to find the reproduction cost of the unit of property.

By the Commissioner:

Q. If the plant were to be sold as a whole and you were called in by the intending purchaser to advise as to the value of the purchase price, would your estimate of depreciation and depreciated value be what your testimony is now, viewing these boilers A and B with their appurtenances—would your advice as a consultant of the intending purchaser be as you have outlined it now? A. I think it would, yes, sir.

By Mr. Miles:

Q. You have testified as to the factors considered by you in arriving at your estimate of the accrued depreciation on boilers Nos. 1 and 2, mentioned on page 15 of Respondent's Exhibit No. 2. Were those same factors and that same general line of approach adopted by you with respect to all of the other items embodied within Account 209? A. Yes, sir, the approach was identical.

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T. E. SEELYE, recalled.

*Cross Examination.*

By Mr. Miller:

Q. Mr. Seelye, will you refer to Account 213 on pages 35, 36 and 37? Is the panel switch board with equipment appraised at \$3,067, not used exclusively for supplying service to the Pennsylvania Railroad Company?

*Theodore E. Seelye—For Respondent—Cross*

Mr. Miles: I have no objection to the witness answering the question, if he knows, but Mr. Favor was the witness who offered all that testimony with respect to that account number.

Mr. Miller: Mr. Seelye, offered the general exhibit.

The Witness: It is described on the page as one switch board, 10 feet 8 inches long, 76 inches high, composed of 6 one and one half inch two section ebony asbestos panels, mounted on angle iron supports, used for control of two 100 cycle motor generator sets and their output for the Pennsylvania Railroad service.

By the Commissioner:

Q. The question was, was it in whole or in part used for Pennsylvania Railroad service? A. It is used entirely for Pennsylvania Railroad service.

By Mr. Miller:

Q. Would that answer apply also to the two motor generator sets appraised at \$6,209 in Account 212, page 28? A. Yes.

By Mr. Miles:

Q. What is the character of service rendered to the Pennsylvania Railroad Company? A. The Pennsylvania Railroad Company uses the energy received through this switch board and from these motor generator sets at 100 cycles for signal control. It is simply equipment which was installed by agreement with the Pennsylvania Railroad for the purpose of rendering this specific service.

By Mr. Miller:

Q. Does the Edison Company maintain a direct current 220 volt Edison free wire distribution system? A. Yes, I think so.

Q. Referring to page 54, Account 213, one lot of conduit cable, wiring, \$47,300, can you give me the amounts included in that total for conduit and cable from the high voltage switch board to the 1000 kilowatt railway rotary transformer? A. I cannot give you that now.

*Theodore E. Seelye—For Respondent—Cross*

Q. Will you furnish that, and also the amount included for conduit and cables from the switch board to the transformer for the three 300 railway rotary transformers? A. Yes..

Q. I think if you would give me the break down of this \$47,600, that would answer most of my questions along that line? A. All right.

Q. Mr. Seelye, you used a figure of 8 percent return as a reasonable return in the past for this company. What factors did you take into consideration in fixing upon that percentage? A. I think that that figure of 8 percent was used in connection with the development of studies in connection with lag, at the time of the original organization of Stone and Webster of the present Edison Light and Power Company, those organizations dating back to the early eighties at which time the electric industry was at least in its infancy, it was a highly hazardous business from the standpoint of investment, and the general return upon the money at that time, in those days, was higher than return secured today. The companies were not subject to regulation. Had they been subject to regulation and limited to a 6 percent return, it is probable that there would be no electrical industry today because nobody would have taken the chance of spending the money required in developing this great industry, as it has been developed. I think that 3 percent is lower than an ordinary investor would have been justified in taking the chance at that time, and I used 8 percent as a means, so to speak, between the present 6 percent return, which has been allowed by this Commission in some of its recent cases, and 10 percent, which is probably more than likely what would have been demanded at that time, in the early years of this Commission, representing a 7 per cent return in practically all utility companies, and that rate persisted until a very few years ago.

By the Commissioner:

Q. Are you including in your explanation the fact that the early stage was one of write ups and other questionable practices? A. No, sir.

*Theodore E. Seelye—For Respondent—Cross*

immaterial whether we make allowance for the rate of return or in the operating expenses. The result will be the same, as far as the public is concerned.

Q. It was those considerations which led you to use the 7½ percent figure instead of 6 percent? A. Yes, sir.

Q. Did you make any studies of business conditions in the territory to determine what the yield on investments is at present or when you gave your testimony? A. What type of investment?

Q. Generally. A. I am informed that the territory in York and the surrounding territory today is in a highly prosperous condition, probably as good as it ever has been.

Q. I mean for the purpose of determining the rate of return to apply to the property. Did you make any investigation of the yields on stock or yields on anything of that sort? Did you make a detailed study that included that question, a detailed study on that angle of the question? A. No, I do not think it is pertinent to this question. The 7½ percent return which was suggested is not equivalent to the imposition of an additional burden of 1½ percent on the operations of the company. If the company does not succeed in earning 7½ percent then the operating expense will increase in an amount sufficient to lead the company into its present position, so that it will have the present operating expense in toto, excepting that the other operating companies will probably not be able to continue, particularly referring to the Railways Company.

Q. As I understand it, you made no investigation of the possibility that the 1½ percent could be added to the base figure of 4 or 5 percent? A. No.

By the Commissioner:

Q. In the event that there shall be a severance of the Railways Company from the Light property, and the bondholders, the investors generally in the Railways Company, will be compelled to assume all of the burden of the Railways Company, will your estimate of 7½ percent return on the Light Company properties still stand? A. If the Railways Company is to con-

*Theodore E. Seelye—For Respondent—Cross*

tinue in service, if the Railways Company is to continue to serve the public in York, then the answer is yes. If the Railways Company is to discontinue its service, then the operating expense of the Electric Company would be increased, insofar as the electric consuming public is concerned. Of course, the public would be deprived of the transportation service.

Q. They would still have the buses? A. If somebody provided them, I suppose.

By the Commissioner:

Q. You then say that the alternative is continuance of the transportation service, with the  $7\frac{1}{2}$  percent allowance, or complete extinction of all transportation service and an additional  $1\frac{1}{2}$  percent upon a nominal 6 percent, as a burden on the taxpayers? A. Yes, sir.

Mr. Miles: You mean rate payers?

The Commissioner: Rate payers.

By the Commissioner:

Q. You do not visualize such a condition as has happened in Harrisburg, where the Transportation Company changed to buses and reduced its obligation to bondholders and other investors, and thereby merged from the red into the black? A. Yes, sir, I can visualize that, but the Harrisburg Railways Company is not affiliated with an Electric Company. In the instance of the York Company they are at the present time and have been for many years confronted with various problems which would not confront the Harrisburg Railways Company.

Q. Your conception is that down in York reside a pair of Siamese Twins for whom a surgical operation is necessary? A. No, sir, I do not think that is so.

Q. They both cannot live as separate entities? A. No, I do not think that is so.

By Mr. Miller:

Q. How much would the operating expense be increased in your opinion if the properties should be separated? How much



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Q. Exploitation involving processes discreditable to the industry? A. No, sir, I only considered the investment of the company. I do not know that there was anything discreditable in the early history.

Q. You do not know anything about the history of the write ups of Insull and others? A. I don't think they had anything to do with the early companies in York.

Q. You are confining yourself to York? A. Yes, sir.

Q. I thought you were generalizing about the birth of an infant industry? A. I think it would not materially change what I have had to say.

Q. You say that whatever applied to the practices in the early days, with the development of electrical industry, before it came under regulation, would apply to York also? A. Yes, sir, I do not think that the write ups that you refer to have any bearing on the rate of return that should be allowed on the invested capital.

By Mr. Miller:

Q. What did you say was the first item which you considered in arriving at the 8 percent return? A. The hazardous character of the infant industry.

Q. I understood that to be the second, as I have it listed here. I thought you mentioned something as to the general business conditions, the return in the territory? A. No, I did not mean that.

Q. Will you give me again the factors you did consider? A. The factors briefly were the fact that the industry was at its inception, was unknown as to its success, was undergoing very considerable and constant changes because of the early engineering features. It was in a period of rapid discovery in changes, and for the purpose of securing money to develop this industry, it will be necessary to demand a higher rate of return. I think I did say that at that time, generally speaking, the return on investment was higher than it is today.

Q. Did you make any studies to determine that or is that just

*Theodore E. Seelye—For Respondent—Cross*

a general impression? A. I think it is a matter of common knowledge.

Q. What type of investment do you have in mind, which yielded a higher rate of return? A. I think business in general, all business yielded a higher return. Today 6 percent rate of return, or 4 or 5 percent return on money or investment in certain parts of the country, in first class securities, is considered adequate. In the western part of the country money today is loaned at 8 percent in many states.

Q. As I understand it, you have made no studies which shows that the rate of return was higher in those days than it is today? A. No, sir.

Q. You stated that you used 7½ percent as your figure for reasonable return on property as of today, and even though the Commission had held that 6 percent was a reasonable return in various cases. Why did you use 7½ percent, as contrasted with 6 percent, allowed by the Commission? A. That was arrived at in this manner: It was based on Commission's allowance of 6 percent, plus the fact that it is considered probable that in the event that the electric company is divorced from the railways company, that the railways company will have difficulty in continuing in existence. The Railways Company now bears certain operating expenses, or uses certain of that expense in the combined operating of the property, which would have to be borne by the Electric Company in the event that the Railways Company discontinued its service. Furthermore, there is property belonging to the Railways Company which is used by the Electric Company, which they would have to buy or rent or duplicate. The joint operation of this group of properties, aside from the fairly measurable savings which result from their joint operation possesses intangible factors which are not quite so definitely determined, but which brought about economies of operation for all of the companies in the group.

Q. Would not those considerations go more to the operating expenses than to the rate of return? A. Yes, but they can only be reflected in the rate of return since we assume that the company is going to continue operating as it is at present. It is

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would the operating expense of the Electric Company be increased?

Mr. Miles: We have already had an exhibit here—

By Mr. Miller:

Q. Is that equivalent to  $1\frac{1}{2}$  percent on what you consider the fair value of the property? A. The measurable amount will be something in excess of 1 percent of the fair value of the property.

Q. How do you estimate that? A. The exhibits which have been submitted indicate the joint use of the operating personnel, which contributes a considerable portion of that total. There is in addition to joint use of facilities, or the use of facilities owned by the Railways Company, in the electric service, and there is loss of revenue to the Electric Company by reason of the discontinuance of the rail transportation.

By the Commissioner:

Q. Is it your contention that in addition to the picture containing an Electric Company and a Transportation Company there should be added a Gas Company, that you should add into the picture of return the deficiency of a Gas Company? A. No, sir, not any, more than you could in this York situation, you cannot do it with the York Railways, the Electric Company, and you cannot do it with the Gas Company.

Q. You are not figuring on the obligations of a dying Transportation Company whatever in this picture? A. No, no.

By Mr. Miller:

Q. Can you tell me whether any of the property which was paid for by donated capital has been excluded from the reproduction cost estimate, Exhibit 2, or the original cost estimate, Exhibit No. 9? A. No; it has not been excluded.

Q. Then the estimates of reproduction and original cost include all of the property owned by the respondent, whether paid for by respondent's capital or the consumers' capital? A. Yes, sir, used and useful.

*Theodore E. Seelye—For Respondent—Redirect*

*Redirect Examination.*

By Mr. Miles:

Q. Mr. Seelye, you were asked whether you made any study showing the rate of return enjoyed by electric utility companies in the pioneer years, so to speak. There was, of course, no regulation in those days? A. No, sir.

Q. So that a company was permitted to earn whatever it could make, without the interference of any regulator body? A. Yes, sir, the only interference it had was the occasional interference of competition, which sometimes bankrupted both companies, which was a condition that regulation was intended to remove.

Q. So that an investor who put his money in an utility in 1887, which is one of the years mentioned in your lag-exhibit, had to take its chance on competition, had to take a chance with the fact that business was not subjected to any regulation or protection of any state or governmental body? A. Yes, sir.

Q. Wouldn't that naturally lead to a higher cost of money for investment in a utility in those days, as compared with the present time? A. Yes, sir, it was more hazardous.

Q. Out of your experience which you have testified to as to those early days, and I am thinking of your operating experience, do you know, or has your attention ever been directed by counsel of the Commission or anyone else, to an incident where a utility at that time was earning 6 percent on its capital? A. No, sir.

Q. As a matter of fact, this Commission allowed 7 percent up until a very few years ago? A. Yes, sir.

Q. Mr. Seelye, I do not understand that you concede 6 percent to be the proper rate of return to be allowed by this Commission or any other Commission's rule or formula or rule of thumb?

A. No, sir, I think that the rate of return is a matter which is based upon conditions of any particular situation.

Q. No rule can be adopted which applies to all companies engaged in the same business in the same state? A. That is right.

*Theodore E. Seelye—For Respondent—Recross**Recross Examination.*

By Mr. Miller:

Q. What do you consider a reasonable rate of return to be, applied to this company, leaving out of account for the moment the  $1\frac{1}{2}$  percent extra which you add because of the possibility of severance? A. I think in the instance of this company the rate of return of  $7\frac{1}{2}$  percent, which takes into consideration the factors which have been enumerated, is a reasonable rate of return.

By Mr. Miles:

Q. You have not given any consideration to what the rate of return ought to be if the facts were different? A. No, sir.

By Mr. Miller:

Q. As I understand your testimony, you add  $1\frac{1}{2}$  percent to the 6 percent return, and the reason you did that was to take care of the increased operating expense and various other items which would be incidental to the severance of the property from these other companies? A. That is correct. That is a measure of arriving at  $7\frac{1}{2}$  percent in this instance. A. 6 percent return on this particular property under certain conditions, which do not exist, would be a reasonable return. 5 percent might be, or 8 percent might be, if we knew those conditions.

By the Commissioner:

Q. Speaking about the early unregulated days of utilities, they got all that the traffic would bear? A. I presume so, sir.

Q. Do you or do you not know that the takings ran as high as 50 percent in some companies? A. I think there might have been a rather unusual instance where that would be so.

Q. Mr. Insull came into York, didn't he, and he ballooned his enterprise into approximately two billion dollars, didn't he?

Mr. Miles: I object to that remark, because we are dealing with the Edison Light and Power Company, we

*Theodore E. Seelye—For Respondent—Recross*

are not dealing with Mr. Insull's utilities, and it has no relevancy here. We are talking about a rate of return.

The Commissioner: We are talking about the early days of the industry.

Mr. Miles: As relates only to the city of York.

The Commissioner: As relates only to the city of York, and it is to that that my question was addressed.

Mr. Miles: Mr. Insull never put two billion dollars into York.

The Commissioner: He might have taken a considerable portion of it out of York:

By the Commissioner:

Q. In other words, Mr. Seelye, when you talk about money earning 8 or 10 percent in those early days, money invested in, as you term it, a hazardous industry, you do not take into consideration, do you, the counter balance of actual return that came from the industry? A. Yes, that is based on the actual return. The tabulation which we have prepared is based on the actual net, to show the actual revenue of the company in those days. Mr. Insull was not in York in those days.

Q. Does it take into consideration the fact that there were write ups and mergers, at unwarranted prices in those early days, with consequent earnings to those original investors' money, of many times 8 percent, as you say? A. Yes, sir, there wasn't any evidence at all to indicate that there were write ups, and they are not taken into consideration in this tabulation.

By Mr. Miles:

Q. As I understand you, in your estimates of the rate of return to apply to your lag exhibit, you have not dealt with the pyramiding of various companies by Mr. Insull, what he may have done or what anyone else may have done, but you have attempted to apply a reasonable rate of return as actually earned by the companies in those days? A. Yes, sir, as nearly as can be determined by the records of the companies.



*David Katz—For Respondent—Cross*

By Mr. Miller:

Q. Your rate of return was not taken off their records, was it? A. Not the rate of return.

By Mr. Miles:

Q. When you talk about the early days, you are talking about some years ago, in the nineties, not what happened in 1927? A. Yes, sir.

By the Commissioner:

Q. You are talking of depreciation or depression years as well as boom years?

Mr. Miles: We are doing exactly what your Superior Court said me must do. We have taken the predecessor companies and from the available records of those companies found out what the return was.

By Mr. Miller:

Q. Mr. Seelye, I request that you furnish me the various items in Accounts 212 and 213, showing the percentages applied to those items to determine the accrued depreciation? A. Yes, I can furnish you with that.

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DAVID KATZ, recalled.

*Cross Examination.*

By Mr. Miller:

Q. Mr. Katz, will you refer to Exhibit 11, please? Do the figures in column 10 of that exhibit include construction work in progress? A. Yes, sir.

Q. What was the amount of construction work in progress on December 31, 1936? A. \$16,666.83.

Q. What did the net additions to the company's capital amount to between June 30, 1936 and December 31, 1936? A.

*David Katz—For Respondent—Cross*

I do not believe that I have it broken down in semi-annual periods. I will be glad to furnish it to you.

Q. All right, will you do that? A. Is that the gross and the retirements, or just the net additions?

Q. Just the net additions, in Accounts 100 and 101? A. I will do that.

Q. Mr. Katz, referring to Exhibit No. 14 of the respondent, line 23 of sheet 1, shows local taxes in the amount of \$35,660. Will you give me the separate amounts of each kind of taxes included in that item? A. The \$35,660 is made up of 3 percent on the gross receipts tax within the corporate limits of the city of York, amounting to \$34,400—

Q. What was the base to which you applied the 3 percent? A. Do you want the base in dollars?

Q. Yes. A. It will be the division of that by 3 percent if that is what you mean.

Q. Is that correct, Mr. Katz? A. That was an accrual.

Q. Then you would not get the exact figure of the local property by changing this three percent to 100 percent? A. No, the actual figure was \$34,317.25. That was determined after the adjustments at the end of the year.

Q. So that the actual payment made was \$34,317.25? A. Yes, sir.

By the Commissioner:

Q. Let us get the larger figure for the record. What was the base? A. \$1,146,000.

Q. I want the base for your figure? Let us have the base itself for your figure?

Mr. Miller: The base, Mr. Commissioner, will be determined on whether you take the \$34,400 accrual or the \$34,317.25 actually paid.

By the Commissioner:

Q. I want the base for the amount actually paid? A. \$1,143,900.

*David Katz—For Respondent—Cross*

Q. This tax was paid upon what? A. The gross receipts within the city limits of York.

Q. Gross receipts over what period? A. The year 1936.

By Mr. Miller:

Q. That accounts for the major part of the \$35,660 item. What else is included in that item? A. There is an assessment against the company for poles ranging from 10 cents to 50 cents a pole. That in the aggregate is \$660.00.

Q. That is pole assessment? A. Yes, sir.

Q. Who made the pole assessment? A. I don't know.

By Mr. Miles:

Q. He means, is it a city tax or a county tax? A. It is a city tax.

Mr. Keesey: I think it is a city and borough's tax on poles.

By Mr. Miller:

Q. The figure of \$660.00, as I understand it, would include the city of York and the taxes of the various boroughs in which the company operates? A. Yes, sir, there is another item, school taxes, which accounts for \$400 of the total.

By the Commissioner:

Q. Is that also within the city of York? A. That is local, city, county, borough and so forth.

Q. That is for the entire county? A. All of the school taxes, local taxes, but I cannot tell you to what extent they are county or boroughs at this time.

Q. Is that gross receipts tax? A. No, that is property tax, a tax of 18 mills.

Q. Upon all your property in the county of York? A. I don't know just how that is determined.

Mr. Keesey: I think it must be a real estate tax on property not used in the production of electricity. They

*David Katz—For Respondent—Cross*

own one house on Water Street in the city of York and it sounds as if it might be a tax on that house.

Mr. Miller: If we could get it on the record what that is, Mr. Keesey, we might as well clear it up.

By Mr. Miller:

Q. On line 24 of the same exhibit, Mr. Katz, the state taxes are shown at \$133,046. Will you give me the taxes and the amounts which make up that item? A. \$33,000 of that total is a 5 mill estate capital stock tax; \$33,289—

Q. Before you leave the state capital stock tax, what was the taxable value of that stock? Do you have that there? A. \$6,600,000.

Q. Was that actual accrual based on actual notification from the Department of Revenue? A. The \$33,000 was based on an assessment, but I understand that during the year, the actual assessment at the end of the year, or the first of this year, the actual assessment is going through at \$6,000,000. The real assessment for that year amounted to \$30,000 instead of \$33,000.

By Mr. Miles:

Q. In other words, there is presently a valuation of \$6,000,000, placed on it by the Auditor General's office? A. Yes, sir.

Q. That is the value for tax purposes? A. Yes, sir.

By Mr. Miller:

Q. Will you tell me the other items that go to make up that one hundred and thirty-three thousand odd figure? A. There is an item of state gross receipts tax, which for the first six months was on the basis of 14 mills, applied to the gross receipts, and for the last six months 20 mills. That in the aggregate totaled \$33,289 as an estimated tax.

Q. What was the 20 mill tax? What was the amount of that? A. I can give it to you in round numbers. I haven't got it figured out to the exact dollar.

Q. All right. A. The 20 mill tax is about \$21,300.

*David Katz—For Respondent—Cross*

By Mr. Miller:

Q. On sheet 8, line 2, appears an item of \$5,600 for maintenance of general office structures. Can you give me the nature of the maintenances represented by that item? In other words, are they extraordinary maintenance expenditures, or are they ordinary expenditures that would be recurring over a period of years? A. I haven't made an analysis of that to see, but it was an expenditure incurred during 1936. Of course, maintenance expenditures occurring that way, they do not equalize themselves every year, unless you maintain an equalization account.

Q. If they are extraordinary expenses, should they not be amortized over a period of years? A. If they are extraordinary expenses of a character that might throw the real earning situation out of line, yes.

Q. We would like sufficiently detailed information on Account 464, maintenance of overhead transformers, and on this maintenance of general office structures to enable the Commission to determine whether the expenditures were extraordinary, whether they were merely ordinary recurring maintenance charges? A. All right.

Q. On line 3 appears the item of \$643.00. Will you give me similar information on that, Mr. Katz? A. Yes, sir.

Q. That is Account 522? A. Yes.

Q. And on line 19, the item of \$3,378 appears in Account 551. Will you give me a break down of that? A. Yes.

Q. On sheet 8, line 10, Exhibit 14, appears the item of Public Service Commission expense in the amount of \$38,710. Do you know what that item covers? A. Yes, sir.

Q. Will you give me the break down on that? A. Do you want it for the record?

Q. Yes. That is made up of engineering services—

Q. In connection with what? A. In connection with the inventory and appraisal in rate cases, preparing all the data, appraisals and inventories in rate cases of the Edison Light and Power Company.

Q. How much is that engineering expense? A. \$27,873.

*David Katz—For Respondent—Cross*

Q. Is that in connection with the work in connection with the merger application? A. No, sir.

Q. Or, the 1934 appraisal? A. No, it has only to do with the present rate case and the expenses incurred up to December 31, 1936.

Q. That, I assume, includes the cost of the entire appraisal of all of the properties? A. That includes the expense incurred up to December 31, 1936, but does not include all of the expenses for inventorying and appraising the entire property of the York Railways.

Q. It does include all of the portion of that cost which was paid up to December 31st? A. Yes.

Q. So that all of the amounts paid on account of the inventory appraisal of all of the related properties paid up to December 31 would appear in this item? A. Yes, sir. We have an engineering expense of \$27,873; legal expense \$9,277. We have an item of printing stationery of \$141.00. I am dropping the pennies. We have an item of transcribing testimony, \$358.00; miscellaneous items of \$1,030.

Q. Do you include accountants' fees in the miscellaneous? A. There is no accounting fees there, no sir.

Mr. Miles: That is included under engineering.

By Mr. Miller:

Q. On sheet 8, line 15, appears the item of \$32,384, other general expenses. Can you give me the break down for that?

A. I will be glad to furnish them to you.

Q. I show you the annual report of the company for 1936, page 316. Does that show the break down on that figure? A. Yes, it does.

Mr. Miller: I assume there will be no objection to incorporating this page 316 as a part of the record by reference.

Mr. Miles: No.



*David Katz—For Respondent—Cross*

Q. What is the base on which you figured that? A. I figured that on a base of \$1,061,965.

Q. I suppose the balance, the 14 mill tax, would be figured on the same basis? A. No, that was figured on a base of about \$985,000.

Q. Is there any other tax item in the \$135,000? A. There is a state corporate net income tax of 10 percent, after Federal amounting to \$63,773.

Q. Will you tell me the base on which that was calculated? A. There is no particular base. There are several computations necessary to arrive at that figure.

Q. Did you make that computation in 1936? A. No, I did not.

Q. Do you have such a computation—

By Mr. Miles:

Q. Isn't your figure taken from the books of the company? A. Yes.

Mr. Miles: Isn't that what you mean. Isn't that really what you want to know?

Mr. Miller: I want to know the calculation.

Mr. Miles: You mean how the company made up its income tax return?

Mr. Miller: How the tax was arrived at.

Mr. Miles: You want to know what their net income tax was in 1936 for the purpose of tax return?

Mr. Miller: Yes.

By Mr. Miller:

Q. What was the amount of the tax you just gave? A. \$63,773.

Q. Do you have the company's Federal income tax of 1936? A. I haven't the figures now.

Mr. Miles: Just to save time, it is bound to be ten times that, the Federal income tax, because that is the basis of the state income tax law.

Mr. Miller: We would like to have the complete calculation of that—

*David Katz—For Respondent—Cross*

By the Commissioner:

Q. Will that be furnished? A. Yes, sir.

By Mr. Miller:

Q. Mr. Katz, are you aware that the rate of state income tax in 1937 has been reduced from 10 percent to 7 percent? A. No, sir.

By Mr. Miles:

Q. You haven't testified to any 1937 figures? A. No, sir.

By Mr. Miller:

Q. The next line, Federal energy tax is shown to be \$38,893. How was that tax determined? A. The amount of the Federal energy tax—the electric energy tax, is based on the kilowatt hours sold by the company, with the exclusion of certain inter-company sales. The total of \$38,893 is equivalent to a rate of .0192 for \$1.00 of revenue. It is based on the total revenue of \$2,020,043.

Q. This figure of \$38,893 is based upon the total revenue? A. It is not based on that, but that is the equivalent. I haven't got the exact base on which the 3 percent has been applied. I will have to furnish you with that.

Q. Will you furnish that to us? A. Yes, sir.

Q. When you furnish that, Mr. Katz, will you designate the different types of revenue, or the sources of revenue, on which that tax was paid or computed? A. Yes, sir.

Q. The Federal capital stock tax is shown on line 26 as \$8,326. What was the capital stock value to which the tax rate was applied—what was the rate? A. The rate was \$1.00 a thousand for declared value, or for one thousand of declared value.

Q. Is that the actual amount or is that an accrual? A. That is an accrual. The actual amount paid was \$10,000.

Q. Is that for the year 1936? A. Yes, sir.

Q. Is that the calendar year, 1936? A. Yes, sir.

Q. Line 28, the Federal income tax is shown in the amount

*David Katz—For Respondent—Cross*

of \$116,425. Can you give me the amount of taxable net income? Perhaps it would save time if you would give me the same type of calculation on this that you are going to furnish in connection with the state tax? A. I will, yes, sir.

Q. We would also like to have the actual taxes paid—— A. Where state taxes have been paid, some taxes falling due in the middle of the year, perhaps won't be paid until next June or July. All taxes are not payable as of December 31st.

Mr. Miles: We had intended to file something comparable to that as an exhibit. We will include the additional information that you ask for in that exhibit.

By Mr. Miller:

Q. Does the Federal income tax figure include provisions for taxes on undistributed net income? A. Yes, sir.

Q. In what amount? A. \$16,366.

Q. On line 27 appears an item of \$48.00. What type of tax is that? A. That is a tax on telegrams and telephone calls under the Revenue Act of 1932.

Q. On sheet 3 of Exhibit 14, line 9, there is an item covering sale of ashes, amounting to \$1,010. Where is the income from the sale of ashes for 1936 included? A. I am not quite sure, but I think this is the net figure.

Q. Showing a loss of \$1,000? A. Yes, sir, it is either that or the sales are included gross in another one of the expenses. Any credit derived from the sale of ashes is a credit to that expense—any cost in connection with delivering those ashes or handling them.

Q. Will you investigate that item? A. Yes, sir.

Q. It seems peculiar that a sale should result in a deficit of \$1010? A. I will, yes, sir.

By the Commissioner:

Q. To whom does the company sell those ashes? A. To anybody that wants them, I suppose.

*David Katz—For Respondent—Cross*

By Mr. Miller:

Q. Exhibit No. 14, sheet 5, line 25, Account 464, shows maintenance of overhead transformers in the amount of \$11,722 for 1936. On Commission's Exhibit No. 10, the comparable cost in 1935 was \$6,356.34, and according to our records in none of the five years from 1931 to 1935, has the cost been in excess of \$6,527. Will you tell me why the 1936 cost was so much greater than the comparable cost in the previous years? A. I don't believe I can give you that information offhand. I will make a search and see if we have an analysis of it.

Q. Will you investigate that, Mr. Katz? A. Yes, sir.

Q. And will you furnish me the information? A. Yes, sir.

By Mr. Miles:

Q. That figure is taken from the books of the company? A. Yes, sir.

Mr. Miller: But it is much greater in one year than it was in the prior years.

Mr. Miles: He is simply testifying as to the state of the company's records, as he views them.

By Mr. Miller:

Q. Sheet 7, line 25, shows an amount of \$11,240 for other general office expenses. To what accounts were the items covered by that amount that you charged, prior to 1936? A. Do you want me to make the same kind of an investigation?

Q. Yes, if you cannot tell me now? A. It will take some little time to work it out.

Q. It will be satisfactory to have you furnish that? A. I will furnish it.

Mr. Miles: What year was it that that maintenance of overhead transformers was higher than the other years?

Mr. Miller: 1936. It jumped over \$5,000.

*David Katz—For Respondent—Cross*

By Mr. Miller:

Q. Can you tell me the service rendered by Stone and Webster for the amount of \$913.80? A. I couldn't tell you that offhand. What was that amount?

Q. \$913.80. That appears in the break down of the \$32.3 figure? A. I will furnish that together with the other information. The information I have here is special investigation \$91. Of course, that would not be sufficient.

Q. No, we would like some further break down on that. On sheet 4, line 2, appears the figure of \$102,122 for steam transferred credit. Does that cover the sale of steam to the York Steam Heating Company? A. Yes, sir.

Q. How many pounds and at what price? A. What account number is that?

Q. Sheet 4, line 2. A. It is 240,287,638 pounds, at 42½ cents a thousand.

Q. On line 5, the same sheet, appears an item of \$43,7 for production expenses credit. What does that cover? A. It is an expense transferred, for the main part, that was for electricity used by other departments, for the transfer of electricity produced to other departments of the company. It is merely a transfer to other expenses of the company, electricity energy used by the other departments.

Q. By other departments would you include the York Railways Company? A. No, merely other departments of this particular company, the Edison Light and Power Company.

Q. Can you investigate that and let me know definitely? A. I will make one search here and if I do not have it here I will furnish it to you. I will have to supply that.

Q. If you should find that the York Railways Company does get some of that power, will you get the amount, the kilowatt hours and the dollars attributable to York Railways Company? A. Yes, sir.

Q. Sheet 8, line 9, shows \$55,050 for uncollectible consumer accounts. What is the basis for that item? A. I will furnish that to you also, Mr. Miller.

*David Katz—For Respondent—Cross*

Q. Can you give me the aggregate amount of uncollectible accounts actually charged off in the last three years, and the amounts recovered in each of the last three years? A. By the actual amounts recovered, do you mean of those items that were actually written off, pertaining to the same items?

Q. Yes, we want the amounts shown on the company's books as recovered; and the amounts charged off, the total charged off each year, and the total amount recovered? A. I will furnish that for you.

Q. Turning to exhibit No. 16, does that cover any rate case expenses charged to operating expenses in 1936, and included in Respondent's Exhibit No. 14? A. Yes, sir.

Mr. Miles: The answer is obviously yes, because Exhibit No. 11 is an estimate of the entire rate case expense, regardless of the year in which it was incurred.

By Mr. Miller:

Q. I assume it does not include any expense incurred in connection with cases other than this, at the Complaint Docket 11108? A. That is true.

Q. Exhibit 17, sheet 1, column "C" is headed, "adjusted fixed capital". Do the figures in that column represent the depreciated fixed capital or undepreciated? A. Undepreciated.

Q. I assume that same answer would apply to column "C" of sheets 2, 3, 4 and 5 also? A. Yes, sir.

Q. Upon what basis did you calculate or make the depreciation shown in column "H" of sheets 1 to 5 inclusive? A. It is roughly about 3 percent of the fixed capital.

Q. Sheet 4 of Exhibit No. 14, lines 7 to 23, relates to transmission system expense. Do any of the charges shown there apply to conversion equipment, do you know? A. You mean the sub-station expense?

Q. I mean the whole group of expense from Account No. 415 to Account No. 434, appearing on sheet 4? A. They include the conversion expenses insofar as they relate to the sub-stations, the operation of the sub-stations and maintenance, in accordance with the classification of accounts.



*David Katz—For Respondent—Cross*

Q. Do you know what part of the transmission expenses in the amount of \$8,874 covers the cost of energy from alternating current and direct current for the York Railways Company? A. No, sir.

Q. Can you find that out? A. It would have to be an estimate.

Q. Can you make such an estimate? A. I will try to get the company to make such an estimate.

Mr. Miller: That will be satisfactory. I think that is all, Mr. Commissioner. I may have some questions after Mr. Katz has furnished the information he has promised to furnish.

Mr. Miles: I have no questions.

Mr. Miller: We have no further cross examination.  
Mr. Commissioner:

The Commissioner: Mr. Keesey, you are to ascertain something in relation to an 18 mill school tax.

Mr. Keesey: That, Mr. Commissioner, should be real estate taxes on that part of the office building which is used for the sale of merchandise by the respondent.

Mr. Miles: We have some additional testimony we want to offer, relating to the value of certain properties owned by the York Railways Company, but used exclusively by the Edison Light and Power Company, in reference to which we made some estimates as to rents which was objected to on the ground that Mr. Reed was not qualified to testify as to the rental value in York. We have had that up with people whose qualifications I am sure you will concede. We also have what is more of a task, some information with respect to the increase in unit prices since November 30, 1936, which is quite important in this case. That cannot be ready until the week after next.

The Commissioner: Can you get ready by next Wednesday morning?

Mr. Miles: I think if you will make it two weeks from Wednesday we can finish it that week, whereas if we come

*Colloquy*

back next week it means that we will have to come back the following week.

Adjourned until Friday, June 4, 1937, at ten o'clock a. m.

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Stenographic report of hearing held in the Public Utility Commission Building at Harrisburg, Pennsylvania, Wednesday, June 9, 1937.

Commissioner BEAMISH, Presiding.

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APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa.

For the Commission.

CLARENCE MILES, Esq., Baltimore, Md.,

VINCENT G. KEESEY, Esq., York, Pa. and

J. HAROLD LA BRUM, Esq., Philadelphia, Pa.

For the Edison Electric Company.

Mr. Miles: If Your Honor please, at one or more of the previous hearings counsel for the Commission requested that he be furnished with certain break downs, detailed analyses of various accounts included within the purview of the exhibit offered by the company with respect to operating revenues and expenses, and at this time in order that the record may show it I now hand Mr. Miller a copy of all of the various analyses that he requested.

I might say so far as we can determine from an analyses of the record we have furnished counsel for the Commission with all the data which has been requested of us, and if we have missed inadvertently anything we would like to know it.

Mr. Miller: Of course, I will have to check this over with the Engineering Bureau, there is some accounting

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*Harry A. Reed—For Respondent—Direct*

data which will have to be checked with the Bureau of Accounts and we will be glad to notify Mr. Miles if he has inadvertently omitted anything.

As I understand it, Mr. Miles, you will have no objection to the inclusion of this in the record.

Mr. Miles: None whatever. We would prefer that it be put in the record.

The Commissioner: You want to put it into the record as the Commission's exhibit if it should be proven to be correct?

Mr. Miller: I would like to have it go into the record after we have checked it and made sure that it is what we have requested, but I would like to have it go into the record as supplied by the company in answer to the Commission's request.

Mr. Miles: We have no objection to that, if Mr. Miller wants it.

H. A. REED, recalled.

*Direct Examination.*

By Mr. Miles:

Q. Mr. Reed, I believe you previously testified in behalf of the respondent with respect to its Exhibit No. 2, dealing with the estimate prepared under the direction of Day and Zimmerman of the reproduction cost of the property of the respondent have you not? A. Yes, sir.

Q. And I believe in connection with that testimony you stated that most of the details with respect to the unit costs of materials and labor were prepared under your supervision, did you not? A. I did.

Q. Now Mr. Reed, did you hear the testimony of Mr. Seeley in behalf of the respondent in connection with fair value when he made reference to the fact that the trend of prices was upward? A. Yes, sir.

Q. Have you caused an investigation to be made for the purpose of determining the increase in the reproduction cost of

*Harry A. Reed—For Respondent—Direct*

the property of the respondent between November 30, 1936 and about May 31, 1937? A. Yes, sir.

Q. Do I understand that the investigation that you have made relates to the reproduction cost of the same property which was appraised in Respondent's Exhibit No. 2? A. It covers the same property as included in Exhibit No. 2, but as modified by the exclusions submitted with Exhibit 8.

Q. Exhibit No. 8, deals with property used and useful in the public service? A. Used and useful or owned by the Light and Power Company.

Q. I hand you a sheet headed "Summary of Reproduction Cost Estimates of Used and Useful Property as of November 30, 1936 and May 31, 1937," and inquire whether this is the information to which you have just referred as having been prepared under your supervision? A. It is.

Mr. Miles: The respondent asks that this be marked and offered in evidence and made a part of the record as Respondent's Exhibit No. 18.

The Commissioner: Is there any objection?

Mr. Miller: Mr. Commissioner, I object to the admission of the exhibit in evidence unless Mr. Miles supports it with testimony. I see no reason to agree to the submission of this exhibit in evidence without some suggestion at least as to how the figures of increase were arrived at.

Mr. Miles: Quite obviously, Mr. Commissioner, I did not expect that this would be placed in the record without any supporting testimony. I know of no way, however, of examining the witness with respect to the figures until he has had them before him.

The Commissioner: It will be marked for identification and not admitted at this time.

Summary of Reproduction Cost Estimates of Used and Useful Property as of November 30, 1936 and May 31, 1937, produced and marked Respondent's Exhibit No. 18.  
E. E. M., 6/9/37.

*Harry A. Reed—For Respondent—Direct*

consideration are not available in York we have used the prices that we would have to pay to bring that labor from either Harrisburg or towns like Coatesville and Downingtown where it might be available.

Q. May I ask what is the reason, if you know, between the labor rates that you have used in this estimate and the present rate for labor being paid in connection with similar construction financed with funds of the United States Government? A. In some cases we have used in this reproduction cost estimate as of May 31, 1937, labor rates which are lower than are being paid for labor on the projects by the United States Government; in certain trades they are the same. As far as I know we have not used any rates which are higher than are being paid at the present time by the Government in this territory.

Q. Now, will you refer to Account No. 257 with respect to overhead conductors where you show an increase in the cost of reproduction between November 30, 1936 and May of 1937 of \$59,793. I will ask you to state or summarize the reasons that cause that increase? A. The increase in this account has been caused primarily by an increase of 14.3 percent in labor and material—I would like to correct that, materials have increased 14.3 percent and labor and materials combined have increased 13.5 percent, and a slight increase in the cost of equipment necessary for the installation of this material resulted in a net increase for the account of 13.7 percent.

Q. Now, in order to save time and not to go over each one of these items, may I ask whether in each instance of property account the basis for your increase in estimated cost of reproduction is the prevailing cost of material and the prevailing cost of labor? A. That is correct.

Q. And with respect to your unit costs of material you are relying upon current prices made available to you by manufacturers and dealers in the particular type of property embraced within these accounts? A. That is correct. There are no estimates which are brought in here not backed by information received from manufacturers, dealers and contractors.

Q. And with respect to your labor cost you have presumed



*Harry A. Reed—For Respondent—Direct*

the prevailing cost of labor in York where your labor is available and if not then the prevailing cost of the nearest available market? A. Yes, sir.

Q. Now, may I inquire whether Day and Zimmerman among other activities constructed distributing lines and utilities properties generally? A. That is correct, we do.

Q. Will you state for the record whether the price that you have used in these rates with respect to which you have just been testifying are in accordance with the experience of Day and Zimmerman in constructing projects during these months in question? A. In general they are. In the distribution accounts the prices that we have used for wire, pole hardware materials, fixtures and so forth, are largely based on the price which we have used in competitive bidding for United States Government work in which we have been successful, competition was extremely sharp in every one of those cases. I think that is a reasonable statement to make of prices that we have used in this estimate, that they are the lowest obtainable on competitive bidding basis that anybody could submit.

Q. For the record will you state the estimated cost of reproduction of used and useful property of the respondent as of November 30, 1936 as found by Day and Zimmerman? A. \$5,572,134.

Q. Will you state the estimate of the reproduction cost of the same property as found by Day and Zimmerman as of May 31, 1937? A. \$6,019,832.

Q. And the increase in the estimated reproduction cost as to May 31, 1937—from November 30, 1936 is what? A. \$447,698.

Q. Referring finally to the general overheads listed under undistributed construction expenditures, will you state whether you have applied the same percentages in arriving at your estimate of reproduction cost as of May 31, 1937 as were contained in Respondent's Exhibit No. 2 dealing with the estimated reproduction cost as of November 30, 1936? A. The percentages for each account are identical with those used for the estimate of November 30, 1936.

*Harry A. Reed—For Respondent—Direct*

Mr. Miles: We offer in evidence at this time and ask that it be received and marked as Respondent's Exhibit No. 18.

By the Commissioner:

Q. Mr. Reed, is this table, which I take it is a condensation and compilation of your work in comparing present prices for materials and labor with the previous case, is it backed up by work sheets? A. Yes, sir.

Q. Are those work sheets here? A. They are not here: they will be made available if you desire.

Q. Will they be made available to the Commission within twenty-four hours? A. Within twenty-four hours? It would be rather difficult, sir—

Q. Where are they? A. They are in Philadelphia.

Q. Can you have them here for examination by the Commission Engineers and Accountants by noon tomorrow? A. That would depend, sir, on what time I would be excused today, as I will have to get back to Philadelphia and get that together and ship them to Harrisburg.

Q. Would it help you any if the Commission were to send with you one of its representatives so that he might bring them back to the Commission? A. Mr. Commissioner, I am required to appear before the Public Service Commission in the state of New York tomorrow in another rate case proceeding, and I don't know whether I would have time this afternoon if I were to get back to Philadelphia to get them together. The men that have worked on this are assigned to other jobs, and I would say it would be a matter of a day to get those papers together and turn them over to the Commission.

Mr. Miles: May I interject this: We will be glad to gather these work sheets together as fast as humanly possible to do it and deliver them to the Commission.

Mr. Miller: I was about to ask Mr. Reed in order to shorten the cross examination instead of going into the comparison between the unit prices he used before in

*Harry A. Reed—For Respondent—Direct*

arriving at his figures on November 30, 1936 and his figures as of May 31, 1937, to request that he furnish the Commission the quotations on units of property, and the unit prices used in each of the appraisals, and also to furnish us with an indication of the source from which he obtained those unit prices, whether written communication or by telephone, and also the source of them.

The Witness: That practically comprises our working papers.

All of that is included in the various volumes of working papers at Philadelphia.

By the Commissioner:

Q. The witness has said that the working sheets are in his office, and that includes all of the material asked for by Mr. Miller now? A. Yes, sir.

Q. Can you by telephone instruct those who helped you to have that material ready and send it here so that the Commission representatives may have it all within a day, bring all of that material back here for the purpose of comparison? A. I can't do that, Mr. Commissioner, because the men who helped me on this work are now working in two or three other states.

Q. Are you now saying that you cannot get this material ready for the Commission? A. No, sir.

Q. What is the Commission to understand?

Mr. Miles: What we are trying to make clear, may I suggest, Your Honor, is that we will be very glad to assemble these papers as quickly as humanly possible and produce it here. We have done that with respect to all the data in this case; we have never delayed Mr. Miller in anything that has been asked for. He is perfectly aware of that, and we will be able to get these papers together in a few days.

The Commissioner: Mr. Miles, are you endeavoring to assure the Commission that there would be as little delay as possible?

Mr. Miles: Yes.

*Harry A. Reed—For Respondent—Direct*

By Mr. Miles:

Q: Mr. Reed, do I understand that the first of the three columns on the right hand under the heading of November 30, 1936 reflects the estimated reproduction cost of the property of the respondent for each of the account numbers shown thereon as of that date? A. Yes, sir.

Q. And the next column on the right is the estimated reproduction cost of the same property as of May 31, 1937? A. That is correct.

Q. And the third column refers to the increase in the estimated cost of the property between November 30, 1936 and May 31, 1937? A. That is correct.

Q. Now, if you will, will you address your attention first to item No. 209 dealing with boiler plant equipment and state to the Commission if you will the reasons that bring about an increase within the period in question of the estimated cost of reproduction of the property embraced within that account in the sum of \$42,360? A. Account No. 209 which covers boiler plant equipment we have an increase of 9 percent in labor necessary for the installation and erection of various units of property. There has been an increase based on quotations received from various manufacturers during the last three weeks in practically all the items of equipment included in this account. That comprises among others a 19 percent increase for boilers, 7½ percent increase on Cox stokers; 5 percent increase on Westinghouse stokers. Fire proof brick has increased 11 percent; red brick 6 percent; soot blowers 10 percent; Dietrich arches 19 percent; boiler breechings 10 percent; iron platforms 10 percent; boiler feed pumps 15 percent; feed water heaters 10 percent; steel pipe has had an increase of 5 percent.

Q. Are these various items that you are referring to as having increased within that period of time the items that are actually included within the property of the respondent in Account No. 209? A. They are the identical items that we have included in our Exhibit No. 2 under Account No. 209.

Q. What is the basis for your statement that prices have increased in accordance with the percentages that you have

*Harry A. Reed—For Respondent—Direct*

indicated? I mean by that from what source have you drawn to reach that conclusion? A. We have obtained either by letter or telephone communication quotations from manufacturers of the equipment included in this boiler house, and have compared those quotations with quotations obtained by us for the reproduction cost estimate as of November 30, 1936, that comparison giving us the percentages which I have just enumerated.

Q. Now, referring to Account No. 241 with respect to substation equipment, I notice that the exhibit indicates an increase in the estimated reproduction cost of that property in an amount of \$40,669. Suppose you refer to your work sheets, Mr. Reed, and tell us the reasons that bring about that increase? A. By comparing both manufacturers' quotations and manufacturers' discount sheets in our office for the items of equipment, included in Exhibit No. 2, under date of November 30, 1936 and the prices now prevailing as of approximately May 31, 1937 and repricing our inventory on the basis of the latter prices our computation shows that there has been an increase in materials of approximately 9 percent and labor of 7 percent, which result in a net increase of the entire account of 8.73 percent.

Q. Now, referring first to the increased price of materials, did you in connection with this account likewise obtain prices from manufacturers and other dealers of the materials that comprise the item? A. Yes, sir. May I explain that? The majority of the items in this account are items for which we have manufacturers catalogs and list prices in our office. We are continuously receiving the last discount sheets from these manufacturers, and we have used the discount sheets as they appear around May 31, in order to obtain the prices which we have used.

Q. Now, you made some reference in your previous answer with respect to this particular item to an increase in labor costs. I should like to ask you whether you are referring to labor rates prevailing in the city of York or whether you are basing that statement upon some average prevailing labor rate? A. That question of labor applies to such labor as can be obtained in the city of York and where the special trade—that might be in

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The Commissioner: These working sheets are important, and the witness has stated that perhaps he is to go to New York, and those who helped him are disbursed in several states and that it may not be possible for the Commission readily to obtain this important material.

Mr. Miles: I think we can get it here in two or three days. I think that is the best we can do, sir.

The Commissioner: I think it is most unfortunate that the supporting data is not immediately available.

Mr. Miles: It may be important, Mr. Commissioner, but if you will permit me to say so, it is a little unusual for us to try the case for the other side.

The Commissioner: I understand that, but this being your table representing condensations, the supporting material should be immediately available.

Mr. Miles: It has not been in any other case up to this time.

The Commissioner: But you are now helping to introduce this evidence.

Mr. Miles: Certainly, and this is the first we have introduced all of our accounting exhibits.

The Commissioner: I understand.

Mr. Miles: Without producing all the books and records.

The Commissioner: This is the crux of this particular part of your case and the supporting evidence should be immediately available.

Mr. Miles: We offer it in evidence, if Your Honor please, and ask that it be ruled on.

Mr. Miller: We have no objection to its being presented in evidence, Mr. Commissioner.

The Commissioner: It will be admitted as evidence, and admitted into the record with the understanding that the Commission will have all of the supporting data including the working sheets. What is your time limit?

Mr. Miles: I say we can get it to you within two or three days.



*Harry A. Reed—For Respondent—Cross*

The Commissioner: Say three days.

Mr. Miles: All I can say, Your Honor, is that it has been the attitude of this respondent in this whole case to produce data asked for as quickly as possible, and we will get it here as quickly as humanly possible. We cannot do any better than that.

The Commissioner: You understand, Mr. Miles, that in the opinion of the sitting Commissioner this supporting data is all important to sustain the exhibit.

*Cross Examination.*

By Mr. Miller:

Q. Mr. Reed, you testified that there was a 9 percent increase in the labor costs in Account 209. What does that amount to on an hourly labor rate; can you give me that? In other words, do you have any break down with you of these percentages in comparable figures showing the increase? A. Not by percentages. The percentage which I quoted I obtained by taking the new figures and the old and arriving at a percentage of comparative figures.

Q. But you only have percentages with you now? A. Yes, sir, the working sheets will show the whole thing.

Q. Where did you get the labor figures for the York area? A. We have obtained those from contractors in York; from the business agents of the Unions, where the type of labor they would require is not available from York, we have obtained them from Harrisburg and in connection with construction jobs which we have charge of in Coatesville at the present time.

Q. Where are the Union representatives located? You mean representatives in Philadelphia? A. No, sir, for example, the electrical workers, we have a communication by telegraph from the business agent of the electrical workers in York, and we have used the rate he gives as the prevailing rate for electrical workers in York.

Q. Now, you testified that as to unit costs, or as to equipment costs you use discount sheets from various manufacturers in

*Albert M. Owen—For Respondent—Direct*

obtaining your May 31st, 1937 figures. Did you use the same method in obtaining the November 1936 figure? A. Yes, sir.

Q. And in setting up your estimate for May 31, 1937 did you contact the same manufacturers as you had contacted in connection with the November 30, 1936 estimate? A. Yes, sir.

Q. For all of the units of property? A. I think that is true without exception. There might be one or two minor exceptions that I don't recall at the moment, but in General that is the case.

Q. As I understand you are going to make available to the Commission not later than next Monday your working papers in support of the November 30, 1936 estimate and May 31, 1937 estimate so that the Commission may compare the costs and prices on those working sheets? A. Yes, sir.

Mr. Miller: No further cross examination at this time, Mr. Commissioner.

Mr. Miles: That is all, Mr. Reed.

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ALBERT M. OWEN, a witness called in behalf of the Respondent, being duly sworn, was examined and testified as follows on

*Direct Examination.*

By Mr. Keesey:

Q. Your name is Albert M. Owen? A. That is right.

Q. Where do you live? A. York, Pennsylvania.

Q. What is your business? A. Real estate.

Q. How long have you been engaged in that business? A. 30 years.

Q. Where? Always in York? A. Yes. Yes, sir.

Q. Are you familiar with the rental price of industrial property in York? A. Yes, sir.

Q. Warehouse property; storage property? A. I rented, sold, bought, all kinds of property in York.

*Albert M. Owen—For Respondent—Cross*

Mr. Keeseý: Do you want to cross examine on his qualifications, Mr. Miller?

*Cross Examination.*

By Mr. Miller:

Q. When did you last purchase, buy or sell industrial property in York? A. Within six months.

Q. And what was that property? A. Did you say buy or sell or rent?

Q. Any of them. A. Well, I rented a warehouse in the rear of my own property which I occupy on North George Street which is partly used for storage and partly for manufacturing. I have sold at public sale—I have bought and sold at both private and public sale, and in fact I think I have handled most of the property of that kind that has been handled in the last six months.

Q. Have you rented, purchased or sold any property comparable to the carbarn of the York Railways Company? A. Yes, I have.

Q. What property was that? A. I think that the property that I just referred to, which is a warehouse property in the rear of my office building on North George Street compares rather favorably with the use which is made by the Edison Company of the York Railways Company carbarn.

Q. You don't mean to say that the warehouse in the rear of your property is similar to the carbarn, do you? A. No, but I mean that the use, or rather the purpose for which it is used is very similar to the use which is made by the Edison Company of the carbarn, in other words, storage.

Q. Have you purchased, leased or sold any property comparable to the office building of the Edison Company in York? A. Well, in my position as a director and chairman of the examining committee of York Trust Company I have handled indirectly both business and office property, mercantile property right in the center of the city. The bank with which I am connected owns property just two doors from the Edison Property, and the arrangements for the leasing of which was made through our committee, of which I am a member.

*Albert M. Owen—For Respondent—Cross*

Q. Will you give me the name of the property? A. It is formerly the City Bank Building, located just the second door. I believe, from the Edison Light Company; now occupied by the Darling Shops the first floor, brokerage office on the second floor, an architects office on the third floor. I have been familiar with all of this property for years. In fact, I was one of the organizers of the old bank which owned this property.

Q. I have one more question. Have you done any work similar to that performed by you for the purpose of this hearing, Mr. Owen? A. Not before this Commission—I will change that. The first Commission I think it was, I was a witness before it in the Bell Telephone Company case about twenty-five years ago.

Q. Was your testimony in that case based upon an examination of property and an allocation of space and value similar to that which you have made in this case? A. Yes, the Bell Telephone Company's rate case, I think about twenty-five years ago. I was a witness as to the value of that property and the rental value of the property in York which is used as an exchange.

Q. Was there an evaluation of that property, however? A. It was all used by the Telephone Company. The testimony is principally that of valuation, not of rental.

Q. What Commission did you testify before twenty-five years ago? A. I said twenty-five years ago, you will probably know from the fact that Ex-Governor Pennypacker was a member of that Commission, I think that was the Commission, he was a member as I recall it.

The Commissioner: Chairman of that Commission.

By Mr. Miller:

Q. As I understand it, until the examination of property allocation which you made for the purpose of the present case, you had never made a comparable investigation? A. You mean before other courts? You mean as a witness?

Q. No, I am speaking about the investigation you made now and particularly the allocation of space? A. I have never been a witness in any case in which a public utility was interested except the one referred to, if that is what you mean.

*Albert M. Owen—For Respondent—Cross*

Q. I don't think you quite understand my question. I assume that you in preparing for this case went to the car barn examined it and placed a value on it, is that right? A. Yes.

Q. And then you allocated that value as between the York Railways and York Edison—Edison Electric Company? A. Yes, sir.

Q. Had you done any work of that sort prior to that time, that is, allocating value? A. Yes, I have done quite a little of it. I think I have been a witness in every case that has come up in the York Courts.

Q. In that case, did you ever make such an allocation or an appraised valuation? A. Well, I think I have been a witness in the case of the Pennsylvania Railroad Company at least half a dozen times.

Q. And what property of the Pennsylvania Railroad Company did you allocate as between the different interests? A. These were property valuations—that estimate was as to valuation of property as a unit without allocation of value, property in condemnation. In other words—

Q. Can't you just answer my question, Mr. Owen? What, if any, property value have you allocated as between different users of that property prior to your investigation for the purpose of this case? A. Well, in connection with my bank duties we have to allocate rents, valuations almost every day, because we have different tenants, different occupants, different buildings and when we make appraisals, which I do for the Trust Company, we have to allocate very carefully what the rentals of different sections would be and what we can get as a total.

Q. That is mainly office buildings? A. That is all kinds of work, from farm property to office buildings.

Mr. Miller: We are willing to admit the witnesses qualifications, Mr. Commissioner.

By Mr. Keesey:

Q. Mr. Owen, are you familiar with the Maryland Avenue car barn owned by the York Railways Company? A. I am.

Q. Where is that located? A. That is located at the corner

*Albert M. Owen—For Respondent—Cross*

of Maryland Avenue and the cross street there—I just don't remember the name—I know the location very well. That is in the northwest section at the corner of Maryland Avenue and I believe they call that Kentucky Avenue in there, it is on the corner of Maryland Avenue in York, the northwest section.

Q. Part of that property is used by the Edison Light and Power Company, is it? A. Yes, sir.

Q. Are you familiar with what part of the building they use? A. Yes, I am, on my personal inspection I saw just what part was allocated for their use.

Q. What, if any, service does Edison Power Company give York Railways Company in connection with the building with its occupancy of that part of the building? A. Well, they are furnished with light; they have a very convenient place for loading and unloading, and with that exception I would say it is just average storage room.

Q. What in your opinion is the annual rental value of that part of the Maryland car barn which is used by Edison Light and Power Company? A. I should say that from \$1050 to \$1100 would be a fair rental for the space which they occupy.

Q. Are you familiar with the North George Street property of the York Railways Company? A. Yes, sir.

Q. And is part of that used by the Edison Light and Power Company? A. Yes, sir.

Q. Have you examined the premises to see what part is used there? A. I made a personal inspection and measurement of the part which is allocated for that purpose, that they are using.

Q. That building is on North George Street just north of the Pennsylvania Railroad, is it? A. Yes, sir.

Q. Are any services rendered to the Edison Company by employees of York Railways Company in connection with the use of those premises? A. They have a man in it, that is, the York Railways Company pay for a man who is in it at all times which makes it very convenient for them to enter to load and unload. That is, Edison Company is also furnished with heat and light for that building.

Q. And what in your opinion is the annual rental value of



*Albert M. Owen—For Respondent—Cross*

that space so used with the service that accompanies it? A. I should say that from \$550 to \$600 would be a fair rental for that portion which the Edison Company uses.

Q. That is the carbarn? A. No, that is the North George Street Freight Station.

Q. The freight station. Are you familiar with the Pennsylvania Avenue carbarn of the York Railways Company? A. Yes, sir.

Q. Are you familiar with that part of it used by Edison Light and Power Company? A. Yes, sir, I made a personal inspection of it.

Q. Does Edison Light and Power Company receive any advantages at all other than furnishing mere space occupied by it? A. The advantages that they receive are a little unusual, and I think quite different than the average storage space. For example, they have the use of the garage, repair shop which adjoins the space which the Edison Company uses; they have access to all the tools, machinery for the repair of the Edison cars in addition to that they are furnished with light and heat.

Q. What in your opinion is the annual rental value of the space used and the service received by Edison Light and Power Company in the Pennsylvania Avenue Carbarn? A. I would say \$950 to \$1000 a year.

Q. How far is Red Lion from the city of York? A. Red Lion is about nine miles.

Q. Are rental conditions of industrial property in Red Lion more or less similar to those in York? A. Well, approximately so although the rentals in Red Lion are not as high as in York.

Q. You are familiar with the rental values of property in Red Lion? A. Yes; sir.

Q. Do you know the Red Lion freight station and waiting room of the York Railways Company? A. Yes, sir, I do.

Q. Does Edison Light and Power Company occupy a part of that building? A. Yes, they occupy a part of the building, which part is used for storage in addition to which their employee occupies an apartment on the second floor of four rooms

*Colloquy*

and a bath, and the occupant of the apartment is furnished with heat and light.

Q. What in your opinion is the annual rental value of the space used by Edison Light & Power Company at the Red Lion freight station? A. I should say \$450 to \$500 would be a very fair rental for that part of the building.

No cross examination.

Mr. Miles: If the Commission please, that includes the respondent's case except for furnishing at a later date some detailed break down of the company's rate case expenses as indicated by Respondent's Exhibit No. 16. I might say to the sitting Commissioner that at the time of the introduction of this exhibit there was a request by the previous Commissioner or counsel for the Commission to indicate what part of that rate case expense may have resulted from the use of property of York Railways Company. We are having that break down prepared now and at the next hearing we will furnish it.

The Commissioner: Together with the supporting material I have requested?

Mr. Miles: Yes, sir. We do reserve, Your Honor, the right to offer in evidence any rebuttal of what the Commission may present.

The Commissioner: I now invite the attention of counsel on both sides to the provisions of the new Public Utility Act. I presume counsel on both sides are aware of the provisions of the act. Have you studied it, Mr. Miles?

Mr. Miles: I have read it in a cursory way, because it was only furnished me recently.

The Commissioner: Have you, Mr. Miller?

Mr. Miller: I know some of it, Mr. Commissioner.

The Commissioner: I direct attention of counsel for both sides to the provisions authorizing the Commission to impose temporary rates at any appropriate stage in the

*Colloquy*

proceedings, that is, at such stage as may appear to the Commission to be appropriate. You are familiar with this provision, are you not?

Mr. Miles: Yes, sir.

The Commissioner: Are you, Mr. LaBrum and Mr. Keesey?

Mr. Keesey: Yes, sir.

The Commissioner: The sitting Commissioner now formally calls to the attention of both sides, and gives notice that it is the intention of the sitting Commissioner to report to the Commission that in his opinion this is the appropriate time for the Commission to consider the imposition of temporary rates. This being the first time such procedure is to be undertaken by the Commission this formal notice is intended to give notice to both sides so that all right, power and authority may be preserved and complied with. Have you anything to offer, Mr. Miles, as counsel for the Company?

Mr. Miles: We have no response.

The Commissioner: Anything to suggest at this time?

Mr. Miles: The only observation we might make at this time, Your Honor, is this:

Section 310 of the Law to which the sitting Commissioner has just referred reads as follows: "The Commission may in any proceeding involving the rates of a public utility brought upon its own motion or upon complaint after reasonable notice and hearing if it be of the opinion that the public interest so requires immediately fix, determine and prescribe temporary rates to be charged by said public utility pending the final determination of such rate proceeding."

Do I understand that Your Honor's observation from the bench is intended to be the notice contemplated by that section of the law?

The Commissioner: It is intended to be such notice, Mr. Miles; and, Mr. Miles, may I suggest that the opportunity is now afforded you gentlemen to argue the ques-

*Colloquy*

tion as to whether or not this is the appropriate time for the imposition of such rates, or to argue any other questions of fact or of law.

Mr. Miles: When does Your Honor propose to conduct a hearing that the section provides shall be conducted after the notice?

The Commissioner: What do you suggest?

Mr. Miles: What am I suggesting? I am merely suggesting that the Act provides that there shall be a hearing after notice.

The Commissioner: Do you request a hearing?

Mr. Miles: Obviously, sir. We don't expect rates to be reduced without a hearing.

The Commissioner: Do you request a hearing and argument upon such action?

Mr. Miles: Upon the furnishing of notice which the respondent regards as responsive to that section, we would, of course, expect that we would be allowed our day in court before any action is taken by the Commission to enforce temporary rates.

The Commissioner: That is what this notice is intended to provide, and this question is addressed to counsel for the Commission as well as counsel for the Company. What will be the nature of the Hearing? Will it be a hearing upon the facts developed in the case up to this time?

Mr. Miles: If Your Honor please, perhaps in fairness to our client I think I should make a statement with reference to this statement which has been interjected into the record by the sitting Commissioner.

In the first place we don't concede that the notice that Your Honor has given here is the character of notice contemplated by the statute.

In the second place we certainly don't concede that this law can be made operative with respect to that part of the proceedings which were conducted prior to the effective date of this Act.

*Colloquy*

In the third place we don't concede the constitutionality of this section which attempts to prescribe a 5 percent rate as being a reasonable rate of return in all instances.

In the fourth place I think it must be entirely obvious to Your Honor that we would be entitled to something more than four minutes—it has been by the clock four minutes' notice—within which to state what would be the company's position——

The Commissioner: I agree with you.

Mr. Miles: —on a notice of an intention to make effective temporary rates.

We would prefer that the Commission take such action as it thinks it should and can under the existing law and the respondent will then attempt to file such answer and take such action as it thinks is proper under these circumstances. I say this with the greatest respect, because I think the record should be clear as to our position.

The Commissioner: I understand. I bring this matter now to the attention of counsel in order that full opportunity shall be given to the company to avail itself of all the protection thrown around the property of the company.

Mr. Miles, do you suggest that argument shall be before the full Commission when argument shall be made?

Mr. Miles: Your Honor, I don't desire to make any suggestions as to what shall be the Commission's procedure. I should like to call Your Honor's attention, however, to the fact that you have made one previous order authorizing the reduction of rates and that there is an appeal now pending in the courts with respect to that.

The Commissioner: That is right.

Mr. Miles: Just what effect, Your Honor, an order such as you now suggest may have upon these proceedings I should think raises a very interesting and complex question of law that certainly I don't care to argue on four minutes' notice.

The Commissioner: Mr. Miller, what have you to suggest?

*Colloquy*

Mr. Miller: Mr. Commissioner, I must with great deference differ with you somewhat on your interpretation of the notice necessary.

The Commissioner: I don't, Mr. Miller, make any claim as to notice or any assertion. I am simply putting counsel for the company upon formal notice, and I don't allege that that is the notice to be given under the Act.

Mr. Miller: It is my thought, Mr. Commissioner, that if the company is given an opportunity to submit data showing the value of its property at a hearing of which it has had reasonable notice in a rate proceeding that that is sufficient notice of hearing prerequisite to the imposition of temporary rates. However, that is for the Commission to determine, and what procedure it may take under the circumstances.

The Commissioner: The company as I get Mr. Miles' statement stands upon the right of a hearing upon the question of temporary rates.

Mr. Miles: I think the Act makes that quite apparent that we are entitled to such hearing.

The Commissioner: The whole matter will, of course, be referred to the Commission and the interpolation on the record shall be presented to the Commission, as matters correlative must be considered before a decision is rendered.

Mr. Miller, as I understand it counsel for the company rests. Are you prepared to proceed?

Mr. Miller: Mr. Commissioner, we have some exhibits here which we have prepared to correspond with the reproduction cost estimate furnished by the respondent as of November 30, 1936, but I do not see that there is any reason for offering it at this hearing. We can correlate that with May 31, 1937 figures which have been presented today, and present the whole matter at the further hearing which will be had.

The Commissioner: Will you be ready to go on today.



*Colloquy*

always reserving to counsel for the company the right to present rebuttal evidence?

Mr. Miller: I don't think so, Mr. Commissioner, and until we see Mr. Reed's working papers I can't estimate how long cross examination will take or what rebuttal evidence we may have to put in.

The Commissioner: We will adjourn then until two weeks from today at ten o'clock.

Mr. Miles, you and your colleagues during that interval attempt to have a meeting of minds on the matter of the application of the temporary rates.

Mr. Miles: We will have the meeting, but I don't know whether they will meet.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Pennsylvania Public Utility Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER,  
Official Reporter.

*Colloquy*

Stenographic report of hearing held in the Public Utility Commission Building at Harrisburg, Pennsylvania, Wednesday, June 23, 1937.

Commissioner BEAMISH, Presiding  
Commissioner LIVINGSTON

## APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa., for Complainant

CLARENCE W. MILES, Esq., Baltimore, Md.

V. G. KEESEY, Esq., York, Pa.

J. HAROLD LABRUM, Esq., Philadelphia, Pa., and

DAVID I. McCAHILL, Esq., Pittsburgh, Pa., for respondent.

The Commissioner: You received notice of the temporary rates. Have you anything to offer by way of testimony, or in any other way at this time?

Mr. Miles: If the Commission please, I think it would perhaps be appropriate for the Company at this time to express its conception of this order and the statute pursuant to which it was presumably entered.

The order to which the Commissioner has referred reads as follows:

"Under Section 310 of Article III of the Public Utility Law, the Commission may, after reasonable notice and hearing, in any proceeding involving the rates of a public utility, immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding. The record in the instant proceeding is sufficiently full and complete to suggest and permit the fixing, determination and prescription of temporary rates under the provisions of the Public Utility Law. However, due to the fact that the Public Utility Law became effective on June 1, 1937, a date subsequent to several of the hearings in this pro-

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ceeding, the Commission will, in the instant case, afford the respondent company an opportunity to present further evidence;

THEREFORE,

Now, to wit, June 15, 1937, it is ordered: That at the hearing scheduled in this proceeding for Wednesday, June 23, 1937, at 10:00 a.m., respondent, Edison Light and Power Company, present any evidence which it may have, in addition to that already presented of record, to the end that the Commission may have before it a proper basis for the fixing, determination and prescription of temporary rates under the provisions of Section 310 of Article III of the Public Utility Law."

Now, if Your Honor please, Section 310 of the Public Utility Law, to which reference is made in this order I have just read, contains some five paragraphs, sub-divided into paragraphs A, B, C, D and E.

Before making any observations as to whether this is the time, or whether this is the character of proceeding in which it is contemplated that a temporary order shall be fixed, I should like to refer briefly to the statutory provisions of Section 310.

Sub-paragraph, "(a)" reads: The Commission may in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing if it be of the opinion that the public interest so requires immediately fix, determine and prescribe temporary rates to be charged by such public utility pending final determination of such rate proceeding. Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than 5 per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service, and if the duly verified reports of such pub-

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lic utility to the Commission do not show such original cost less accrued depreciation of such property the Commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinbefore provided."

Now, sub-section "(b)" without reading it to Your Honor, because I am sure you are perfectly familiar with it, presumably vests in the Commission power to prescribe temporary rates as against utilities who do not maintain continuing property records.

Sub-Paragraph, "(c)" of the same section permits the Commission to prescribe month to month temporary rates.

Sub-Paragraph, "(d)" vests in the Commission authority to prescribe temporary rates for other periods.

Sub-Section, "(e)", by its terms requires that if on a final order the revenue is greater than that permitted by the temporary order or allowed, then in such final order the Commission must permit the utility to earn the difference between the amount prescribed in the temporary order and that determined in the final order.

Now the order, which I have just read to Your Honors, gives to this company no indication of whether these temporary rates which are suggested by the last paragraph of the order are to be trial rates, that is to say, rates for a given trial period, or to be rates from month to month, or whether they are merely to be rates to remain effective until the final order is passed fixing the value of the property of the respondent and lay down the rate of return which it will be entitled to earn.

However, it would seem clear to us that paragraphs C, D and E have no bearing upon a situation of this sort.

It seems to us, as I have stated before, that paragraph "(b)" is applicable, and is to be invoked by the Commission, as we interpret the section, only where the utility in question does not maintain continuing property records; and that paragraphs C and D are not intended to be invoked during the

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tendency of a formal proceeding, but are to be invoked only where there has been no such formal proceeding, or the Commission has before it only records or monthly reports and other data sufficient in its judgment to support a temporary order. Hence, by the process of elimination, so to speak, it appears to us that the section pursuant to which this Commission has presumably acted, and pursuant to which it presumably it only could have acted in issuing the order I have just read, must be sub-section A, of Section 310, and that is the section which says that the Commission may in any proceeding involving the rates of a public utility enter this temporary order.

Now, if Your Honors please, we submit in all fairness, and we think by the application of fundamental rules of reasoning that at this stage of this particular proceeding the passage and entry of an order fixing temporary rates would be substantially nothing more than a gesture, and we don't think that the Legislature ever intended, nor do we think that this language could be construed to justify the issuing of a so-called temporary order at the very conclusion of a formal proceeding.

To illustrate what I mean, if this section had been invoked, assuming that it had been in existence some five or six months ago, then it could be understood why the Commission would enter such a temporary order—

The Commissioner: You have not concluded your case then.

Mr. Miles: I say five or six months ago.

The Commissioner: Yes.

Mr. Miles: Of course not, and that is just my point, that a temporary order as distinguished from a permanent order should not be entered until the case is concluded. The very purpose of permitting a temporary order under this paragraph of Section 310 is to give the rate payer the benefit of some

*Colloquy*

protection during a long drawn out controversy relating to rates.

The Commissioner: Are you familiar with the history of rate cases in Pennsylvania?

Mr. Miles: Am I familiar with them?

The Commissioner: Yes.

Mr. Miles: In a general way, sir.

The Commissioner: Do you know that even after the conclusion of testimony rate cases have dragged along for eight; ten, eleven years?

Mr. Miles: That is quite true, sir.

The Commissioner: And you would say that the Commission is powerless to cure that intolerable condition?

Mr. Miles: No sir, nor could any remark that I have made be properly subjected to that interpretation. If Your Honor will permit me to complete my argument, I am attempting to develop what our conception of this statute is.

I say that by its language it is clear that the Legislative intention here was to prescribe means whereby this Commission could enforce a rate pending determination of a formal proceeding. That is clearly the language of the paragraph itself, and with the greatest deference to the sitting Commissioner, I say that in the only reported case of which we have any knowledge in this country, exactly that interpretation has been placed upon a statute almost verbatim similar to this, and that is the case of the Bronx Gas and Electric Company, which was decided by the Court of Appeals of New York, on July 8, 1936.

Now, if Your Honors will take time and trouble to compare Section 114 of the New York Public Utility Law with Section 310 of the Pennsylvania Public Utility Law, you will find the language is almost uniformly the same as to the application of the 5 percent on depreciated original cost as the Pennsylvania General Assembly has written into this section.



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Pursuant to that section of the New York Law the New York Commission issued a temporary order during the early stages of a formal rate proceeding involving the Bronx Gas and Electric Company. I might say that there was a section in the law there similar to here which prevented a supersedeas. The Bronx carried that order into the Courts and attacked the constitutionality of the law, relying upon the decision of the Supreme Court in the Pendergast Gas Company case, which involves, I think, a telegraph and telephone company. After distinguishing between the rule laid down by the Supreme Court in the Pendergast case and what the New York Court of Appeals felt was the proper interpretation of this section, the New York Court of Appeals then proceeded to state its conception of the purpose and intention of the section of the New York Law, which as I have repeatedly said is almost a verbatim copy of the Pennsylvania law.

"After this decision," referring there to the Pendergast decision of the Supreme Court, "the Legislature of the State of New York was confronted with this quære: Was it ever possible to compel public service corporations to charge reasonable rates, pending the long drawn out and interminable proceedings to establish a fair return? The establishment of the proper base rate, or the present capital investment, upon which a company is entitled to a fair return, has become an intricate, involved, tedious proceeding, extending into months and years. Much of the evidence produced is expert testimony, varying in worth and uncertainty, presenting a maze of detail and figures." \* \* \* Without suggesting in any way that the public service corporations have not acted with utmost good faith, we can see the opportunity as did the Legislature, for the intentional delay in these proceedings whereby unwarranted profits may be obtained. The fixing of a reasonable rate by these public service corporations, who enjoy from the public such valuable franchises, to be of any value should be a matter of speedy regulation. The courts should not encour-

*Colloquy*

age such finesse in figuring as to make these hearings upon rate questions an obstruction instead of a relief. Of course caution must be used on both sides for the desire for improper gain is oftentimes as eager with the consumer, or his spokesmen as with the corporation.

"Recognizing the present day conditions surrounding the difficulty in determining the proper rate, we come back to the question: Is it possible for the law, Legislature or Congress to provide for a temporary rate, pending these lengthy hearings? The Legislature evidently had in mind all that I have here said regarding the Pendergast case, *supra*, and the difficulties there pointed out when in 1934, chapter 287 of the laws of that year it added sub-division 114 to the Public Service Commission's Law. This section reads: "Temporary rates. To facilitate prompt action by the Commission in proceedings involving the reasonableness of the rates of any public utility and to avoid delay in any such rate proceedings, the Commission is hereby authorized to require any public utility company to establish, provide and maintain continuing property records including a list or inventory of all of the physical property actually used in the public service, and to require any public utility company to keep its books, accounts, and records in such manner as to show currently the original cost of said physical property and the reserves accumulated to provide for the retirement or replacement of said physical property.

"The Commission may in any such proceeding, brought either on its own motion or upon complaint, upon notice and after hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by said utility company pending the final determination of said rate proceeding." Now that, Your Honors, is the language of this Pennsylvania section also. "Said temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than 5 per

*Colloquy*

entum upon the original cost, less accrued depreciation of the physical property of said public utility company used and used in the public service, and if the duly verified reports of said company to the Commission do not show the original cost less accrued depreciation of said property, the Commission may estimate said costs less depreciation and fix, determine and prescribe rates as hereinbefore provided." Now, that is a verbatim copy of this paragraph of the Pennsylvania law. Then the court goes on without burdening Your Honors with reading the whole section, the court goes on to say that course to allow 5 percent on the depreciated original cost a permanent order would be to violate all of the theories and rules of rate making laid down by the Supreme Court of the United States, but they say the constitutionality of that is saved by virtue of the fact that there is a provision in this law which says that when a permanent order is entered the company must be allowed to earn the difference between that which was prescribed in the temporary order and that which was prescribed in the permanent order.

Now, that reason, if Your Honors please, so far as the reasons are concerned and the circumstances under which a temporary order can be entered, is the position we take here, and is a sound position. What possible benefit can be gained by adding the public of York when at the conclusion of a rate proceeding which has lasted seven months, during which a luminous record has been compiled, a temporary order is entered which within three or four or five weeks this Commission may be required to substitute by a permanent order.

Now, it is not necessary to that argument to suggest that litigation may follow the entry of the permanent order—

The Commissioner: Why isn't it?

Mr. Miles: Because if litigation does follow we are required to give a bond which protects these consumers against rate reduction that has been ordered—

*Colloquy*

The Commissioner: The Solar Electric and other companies whose delays not only clutter the record, but have prevented substantial justice to the citizens—

Mr. Miles: I am not interested, Your Honor, as to whether substantial justice has been given to other companies, I am attempting to argue the record in this case, and to state our position here.

The Commissioner: We are interested in substantial justice to the citizens.

Mr. Miles: To the citizens, but not knowing the facts that these other cases involved, I cannot debate with justice any statement that may be made about them, but I do know that we are through this rate case. We have perhaps three minutes of testimony this morning, at the conclusion of which, subject to whatever the other side cares to offer Your Honor will have before it this entire record. I submit that under those circumstances that is the time to pass a permanent order and not a temporary order. S

Now, if Your Honors please, there are additional reasons for our position with reference to the temporary order which at this time would be nothing more than a gesture.

Section 305 of this new law reads as follows:

"No public utility shall require the payment of rates in advance or the making of minimum payments, ready to serve charges, or deposits to secure future payments of rates, except as the Commission by regulation or order may permit."

Now, we are not conscious that the Commission has entered any such order or regulation. The section would be construed to mean that in the absence of such regulation no service charges can be exacted by any public utility company after the effective date of this law, and if that is true, and that is the interpretation which this Commission placed upon it, then it costs the Edison Light and Power Company \$310,000 today, which comes right out of its revenues, and it certainly must

*Colloquy*

be considered in the rendition of any order requiring a reduction of its rates.

Now, I don't know whether that is the interpretation Your Honors put on this section. My brothers don't know whether that is the interpretation that Your Honors put on this section, but we have read it, that is the thing that it is doing, and I say in all fairness, not only to the Edison Light and Power Company, but any other utility company in this state whose rates are being subjected to an attack as to their reasonableness, is entitled to know whether \$300,000 is to be stricken from its revenues because of the abolition of service charges, ready-to-serve charges, minimums and other things that are referred to in Section 305.

Section 1201 places upon the utility, subject to the jurisdiction of this Commission, and vests in the Commission wide discretionary power to determine the method of allocating that cost between the various utilities. We don't know how much Your Honors are going to say shall be charged to the Edison Light and Power Company as its proportionate contribution towards the cost of regulation, but obviously whatever is charged to it affects its operating expenses, just as whatever is extracted from them by virtue of this service charge provision, takes that much away from its revenues. Now, how Your Honors can pass a so-called temporary order until these questions of public policy have been clarified by this Commission we are in complete ignorance.

Now, Your Honors, there is another reason, if I may be permitted to say so, why we think that in all fairness this Commission should move slowly in passing this temporary order. I know Your Honor like all the rest of us is but a human being, and I know Your Honor has had a great deal of experience since he came on this Commission, not only concerned with the record of the Edison Light and Power Company, but with the records of probably many other cases that

were pending before this Commission before you assumed office. This record is full of instances where Your Honors' predecessors denied to this company the right to present testimony which we think goes to the very essence of this whole thing. Whether this Commission has had an opportunity to review that record fully I don't know, I would rather imagine that they have not, and I say that there are numerous instances where we were denied presenting to that Commission, and Your Honors are the successors of that Commission, and under the provisions of this law you take over the record as you found it, we were denied the right to show what would be the effect, not upon the stockholders, if you please, or those owning securities alone of this company, but upon the public of York, if this Commission adhered to its previously expressed public policy of allowing a 6 percent rate of return.

Now, Section 310, in the very first sentence of the paragraph, under which I think we agree this Commission is proceeding in connection with its contemplated temporary order, says that if it, the Commission, be of the opinion that the public interests requires it can fix, determine and prescribe by temporary order the reasonableness of these rates. Now, Your Honor, we submit that we are entitled to a hearing before this new Commission on the question of whether that testimony should have been rejected that was prepared in this proceeding.

The Commissioner: Do I interpret that correctly as being a request for an opportunity to argue those points before the whole Commission.

Mr. Miles: Yes, I am coming to that in just a minute with a little more clarity. We were prepared at that time and we are prepared at this time, or at any other date that this Commission designates to establish, we think, beyond any question of reasonable doubt, that the consumers, and I am speaking now of electric consumers of the Edison Light and Power Company, derive substantial benefits from the affiliations of



*Colloquy*

that company which the Steam Heat Company and the Railway Company, and that the application by this Commission of a 6 percent rate of return to the property of the Edison Light and Power Company would destroy those benefits which have existed in past years, and not only destroy with it the railway service to the people of York, but what is more important as a matter of law, I don't say more important as a matter of public policy, because it is difficult to me to think of anything more important than maintaining that railway, it is more important to the people of York, I say as a matter of law, what is more important is the fact that when you lay down the rule which says that this respondent company can no longer enjoy the benefits that it has previously enjoyed by virtue of its affiliations with these other two companies, in the way of reduced operating expenses and in the way of sales of energy and at compensatory rates, then you are directly, and it is inevitable, you are directly penalizing the electric rate payers of the Edison Light and Power Company. With that sort of a record, bearing in mind that we are through this case, we are not at the beginning of it, we are towards the end of it, we are at the very finish of it, bearing in mind that fact, and the fact that this record is full of questions that aroused great debate, as to public policy, bearing in mind that the General Assembly of this state in the exercise of its wisdom saw fit to rip out the Commission which denied us that opportunity, saw fit to replace them with a new Commission under a new law, I say that bearing all those things in mind, if Your Honors please, we submit that this is not the time for a temporary order. This is the time for this Commission to pass a permanent order after reviewing this record, after affording us an opportunity to be heard on these things that the other Commission rejected.

Now, this is an unusual situation if the Commission please. I don't know whether Your Honors agree with the ruling Com-

*Colloquy*

missioner Stahlnecker made, with which his associates presumably agreed, I don't say that you will agree with this ruling or that you will disagree with it, but I submit that in all fairness we should be afforded our day in Court before this Commission to argue whether Commissioner Stahlnecker and his associates were right in denying this company an opportunity of presenting those things in the record, and I say refusal to do it can only lead to litigation. We don't want to spend our money and time in the courts, whether Your Honor thinks we do or not. We want to reach the end of this proceeding, but we want to live, we are entitled to live with a reasonable rate, and that is the goal and the boon which we are seeking.

The Commissioner: The sitting Commissioner will present your request for argument before the full Commission at its next executive session.

Mr. Miles: Thank you, sir.

At the same time we would like to argue before the full Commission, because you cannot divorce these questions, we would like to argue before the full Commission, and I want to say, Commissioner Beamish, that that is no reflection in any manner upon you, I don't want it to be so considered—

The Commissioner: I take it that way.

Mr. Miles: We want an opportunity not only to argue before the whole Commission the propriety of Commissioner Stahlnecker's ruling, but we want an opportunity to argue before this Commission whether this is the time and the place for a temporary order.

Now, so far as additional testimony is concerned, my brothers remind me there is one other problem that enters into this situation, and that is in connection with the interim order.

The Commissioner: That need not concern you. That interim order has been rescinded.

Mr. Miles: It has been rescinded?

*Colloquy*

The Commissioner: Yes.

Mr. Miles: Now, with respect to additional testimony, we have two things in mind, and when I said we had testimony that would require three minutes, it will not greatly exceed that. We want to put Mr. Seelye on the stand, and this testimony is not prevented by the order for temporary rates, this is part of the permanent record in this case, we want Mr. Seelye to testify as to certain phases of the rate case expense; we want an opportunity for him to tell this Commission what would be the effect upon this company of not permitting it to continue making service charges. Then we want to preserve, of course, unto ourselves the right to offer any testimony in rebuttal to that which counsel for the Commission will presumably offer today.

Now, with the testimony of Mr. Seelye, and reserving the right to offer rebuttal testimony, I want to express this as forceably and sincerely as I know how, that we have an opportunity to present this whole matter before this entire Commission so that we cannot be placed in a false light with our consumers or anywhere else. With this reservation, unless my brothers have something to add, we are prepared to go forward with the testimony in the permanent record.

The Commissioner: In reply to your statement as a whole, the sitting Commissioner observes that it is his undeviating purpose to afford both sides the fullest opportunity to lay their full case before the Commission, and to write into the record whatever testimony, whatever relevant arguments they may have to make; that insofar as your opportunity to be heard and have your day in court the sitting Commissioner has the fullest sympathy.

Mr. Miles: Thank you, sir.

The Commissioner: The sitting Commissioner will report your request for argument before the full Commission to the Commission and you will have an early reply.

I would ask counsel for the Commission if he has anything to say in reply.

Mr. Miller: I want to disagree with Mr. Miles' interpretation of the provisions of Section 310 of Article 3 of the Public Utility Law as to the imposition of temporary rates.

Mr. Miles said, among other things, that Sections A and B were divisible—paragraphs A and B of Section 310 were divisible in that paragraph B would not apply to the respondent company.

As I interpret the law that is not correct.

Paragraph A states a minimum limit below which temporary rates shall not go, or a return of 5 percent on the original cost of the company's property.

Paragraph B says that where continuing property records are not available that the return shall be not less than an amount equal to the operating income for the year ending December 31, 1935 or such other subsequent year as the Commission may deem proper, and to be determined in a specific manner, shall be the minimum below which temporary rates shall not be reduced.

Now, the present respondent, the Edison Light and Power Company, does not have continuing property records, and therefore is under the provisions of paragraph B, as well as under the provisions of paragraph A of that section.

Relating to the time when temporary rates may be prescribed, Mr. Miles read that Section 310 says that the Commission, if it be of the opinion that the public interests requires may immediately fix, determine and prescribe temporary rates. Now, who is going to say that the Commission cannot defer the determination of what its opinion is, or the determination of what the public interest requires, until a full record is before it. It must act on a partial record. Now, I don't think the Act requires any such thing. It seems to me only reasonable to interpret the Act as permitting the Com-

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mission to take testimony in the proceeding, and when that testimony in the Commission's opinion indicates that temporary rates should be fixed, determined and prescribed in the public interest that at that time, and not before, regardless of when that time is, the Commission should fix, determine and prescribe the temporary rates. That provision that the Commission "if it be of the opinion that the public interest so requires" to my mind gives the Commission a discretion as to when the temporary rate shall be prescribed. Now, Mr. Miles suggests that temporary rates should not be prescribed before the conclusion of a rate case record, because that is the time for the prescription of permanent rates. That would be true in an ideal situation. If we lived in Utopia the Commission could then wait probably until after the conclusion of testimony to prescribe permanent rates, but it is physically impossible for men or human beings to review a record that has taken seven months to make up, and to arrive at a proper, reasonable and fair determination of reasonable permanent rates within a week or even a month, or even within two months, especially since Mr. Miles desires to argue to the Commission certain matters, which while they may be important enough, nevertheless, do not relate to the basis for prescription of temporary rates.

The words of the section are, that the Commission pending final determination of a rate proceeding may prescribe temporary rates. Mr. Miles apparently interprets, "final determination" to mean; "conclusion of testimony," because he says that after the testimony has been concluded temporary rates can't be prescribed. I don't think final determination means that. Final determination as I interpret it means the time when the Commission finally determines that certain rates are reasonable on a permanent basis, or as permanent as rate prescription can be, as contemplated by Section 1103 of Article 11 of the Public Utility Law. Final determination on appeal,

*Colloquy*

under Section 1103, any temporary rates prescribed by the Commission will be the rates to the public while an appeal is before the Superior Court if a supersedeas is granted. If no temporary rates are prescribed at the conclusion of the testimony and before the determination by the Commission and an appeal is taken there will be no temporary rates, and if supersedeas is granted those rates will be the rates that they were charging when the rate proceedings were begun and not the temporary rates prescribed by the Commission.

Now, as to Mr. Miles request for argument before the Commission; as I understood it, it was divided into about three parts. One was that he desired to argue the matter of temporary rates. Well, I, of course, see no objection to that.

Another point was that he desired to argue the decisions of Commissioner Stahlnecker as to the exclusion of the properties of the affiliates of the respondent company from the rate base of the respondent company. As to that again it is a matter for the Commission to decide whether in its opinion it is proper to include those properties.

Mr. Miles: Of course, we didn't ask that the property be included in the rate base. We never suggested that. We are not asking that any properties be included in the rate base.

Mr. Miller: You offered valuations of the properties of these affiliated companies, the York Steam Heat Company, the York Bus Company and the York Railways Company.

Mr. Miles: That is right, evidence of other matters, but not at any time did we suggest that those properties be included in the rate base. I just say that because I don't want the present Commission to be confused. We did offer to show evidence of the benefits that resulted to the Edison Company and its consumers as a result of certain agreements that it had with these other companies. We further attempted to show that to divorce these three companies would increase the operating expenses of the Edison Company, and would also cause them



*Colloquy*

to suffer the loss of certain revenues, both of which we felt would be detrimental to the consumers of the Edison Company, and we think there are some Pennsylvania Superior Court decisions to sustain that reasoning.

The only reason I interrupted Mr. Miller is I didn't want any Commissioner to be under the impression that we were asking for any joint valuation of the properties of these companies.

The Commissioner: What you did ask for was an allowance of  $7\frac{1}{2}$  percent instead of 6 percent.

Mr. Miles: That is right, sir.

Mr. Miller: With respect to Mr. Miles' desire to argue that before the Commission, I don't think there is very much basis for his request. Mr. Seelye's testimony will show that he said that a rate of return of  $7\frac{1}{2}$  percent was reasonable. When I asked him on what basis he arrived at that  $7\frac{1}{2}$  percent figure he said that he had taken 6 percent and had added  $1\frac{1}{2}$  percent because of the advantage which the affiliation of those companies had to the Edison Light and Power Company and to preserve the financial situation between these affiliates. For that reason he added  $1\frac{1}{2}$  percent so that the financial situation could be preserved to that extent at least.

Mr. Miles: May I add just one observation?

The Commissioner: Yes.

Mr. Miles: In view of the assurance of the sitting Commissioner that the question of this offer before the Commission is to be given serious consideration, because I don't want any confusion in the mind of this Commission, I want to make this perfectly clear statement that we offered certain studies as to revenues, expenses and property of the two affiliates, due to a finding of the Superior Court in a previous case decided several years ago, where an offer was made by the respondent in that case to get some benefits from the result of its affiliation with two other companies, the Superior Court held that

*Theodore E. Seelye—For Respondent—Direct*

while there might be, and I am almost quoting their language the best I can from recollection, while there might be room to support the legal contention that consideration of the effect upon the affiliates should be given, that the respondent in that case had failed to present to the Commission evidence of what the situation was with respect to its affiliates. Now, we don't want to find ourselves in that position in this case.

The Commissioner: I understand your position perfectly, Mr. Miles. Call your witness.

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THEODORE E. SEELYE, recalled.

The Commissioner: For the benefit of Commissioner Livingston this witness is who?

Mr. Miles: Theodore E. Seelye, Vice President of Day and Zimmerman, Incorporated, of Philadelphia.

Also for the benefit of the Commissioner, Day and Zimmerman have been charged with the engineering and accounting investigation in this case which Your Honors have before you, and the exhibits which have been heretofore presented, and I am going to make some reference to one of those exhibits.

*Direct Examination*

By Mr. Miles:

Q. Mr. Seelye, I call your attention to a copy of Respondent's Exhibit No. 16 as presented in this case, dealing with the rate case expenses. I ask you how much of the total figure of \$86,000 shown on that exhibit results from expenses incurred incident to the examination of the properties and accounts of the York Railways Company and York Steam Heat Company? A. An exact division of the expenses between these respective companies is not entirely possible because of the

*Theodore E. Seelye—For Respondent—Direct*

fact that men worked jointly on various phases of the work. We have made as careful an estimate as we can of these services, and the cost of the work for engineering and accounting with respect to the Railways Company and the Steam Heat Company and the Bus Company is about \$16,000.

Q. In other words, of the \$86,000 total estimate of Day and Zimmerman, is that \$16,000 could be attributed to their investigation of the properties of the Railways Company and the Steam Heat Company? A. Yes sir.

Q. And the balance attributed directly to Edison Light and Power Company? A. Yes sir.

Q. Now, Mr. Seelye, without qualifying you or attempting to do so as a lawyer, but purely by way of foundation, I call your attention to Section 305 of the Pennsylvania Public Utility Law, the first sentence of which reads as follows: "No public utility shall require the payment of rates in advance or the making of minimum payments, ready-to-serve charges, or deposits to secure future payments of rates, except as the Commission by regulation or order may permit." I ask you whether you have caused to be made any examination of the books and records of the respondent for the purpose of determining, based on its 1936 operations, how much its gross revenues would be reduced if it were not to continue making such charges as are enumerated in Section 305?

Mr. Miller: Now, I want to interpose an objection to that, Mr. Miles. The Commission has adopted a temporary regulation No. 2, which covers certain exemptions from the provisions of Section 305, and I think that Mr. Seelye's testimony should not be given until he has had an opportunity to examine that regulation.

Mr. Miles: Now, in response to my brother's objection, I am compelled to take issue with him as to the admissibility of this evidence. If for any proper rea-

*Theodore E. Seelye—For Respondent—Direct*

son because of the regulation which he has referred to, by its very premise provides it is a temporary regulation, the only purpose of the question propounded to Mr. Seelye is, and that is all it is offered for, to show the Commission what would be the effect if they were denied the right to continue making these charges. Now, if in the exercise of the Commission's discretion they are not going to be required to discontinue this practice, then the Commission will have the benefit of the opinion evidence. On the other hand if it is the Commission's intention to prohibit such charges, then we think it is equally proper for them to know the extent that the respondent would be affected.

The Commissioner: Your question as the sitting Commissioners understand it is that supposing all these charges were prohibited by the Commission, and that no order were issued which would in any way shade or modify that condition, if such condition existed, what would be the effect upon this company?

Mr. Miles: That is right.

The Commissioner: And as I get Mr. Miller's objection it is to the effect that no modification exists, and that the question should direct itself to realities and conditions as they exist since that modification was made by the Commission.

Mr. Miller: That is correct, Mr. Commissioner. Of course, if Mr. Seelye wants to testify as to the various amounts which will be lost to the company by reason of specific provisions of Section 305, then Mr. Miles suggestion that the Commission pass upon Mr. Seelye's testimony in the light of the temporary regulation may be all right.

The Commissioner: I will admit the question since it will throw light upon the condition. You may answer it.

*Theodore E. Seelye—For Respondent—Direct*

The Witness: Our investigation was confined solely to the matter of the service charges applying to the light rates and not to the demand charges which might be by some construed as covered by that section. The service charge in York is 95 cents, which is also the minimum charge. Based on the number of billings in 1936, of which there were 326,623 subject to the payment of this service charge, the amount of reduction which would be involved by the elimination of this service charge would be \$310,292.

Mr. Miles:

Q. And that figure, I believe, is based on the company's 36 operating experience? A. Yes sir.

Q. The \$310,000 figure which you have given is a gross figure, is it not? A. Yes, that is the gross reduction.

Q. And presumably if service charges were prohibited by Commission the company's net revenue would not be reduced by \$310,000, but some sum after considering the reduction in income taxes which would result? A. Yes. I have not computation to indicate the reduction in net revenue.

Q. That is to say that obviously if the company's gross revenue is reduced in payment of income tax, it is lessened, and hence there is an effect upon the difference between the net and gross income? A. As well as gross receipt tax and so forth.

Q. Have you any estimate of what that amount would reach in figures? A. I have no estimate, Mr. Miles.

Q. All right, have you anything— A. I have not prepared any estimates.

Mr. Miles: The witness is with you.

*Theodore E. Seelye—For Respondent—Cross*

*Cross Examination*

By Mr. Miller:

Q. Mr. Seelye, the York Railways Company has as much property as the Edison Light and Power Company, does it not?

A. No sir.

Q. Do you know what it is? A. We didn't offer that in evidence, and I don't remember the figures because I have not planned to deal with that, but I am quite certain that the property of the Railways Company is less than the Electric Company.

Q. They are substantially the same, are they not; there is no great difference between them? A. Yes, I think there is a very considerable difference.

Q. Would you say that there was a difference so great as to explain the difference between the cost of \$70,000 which you say is attributable to the appraisal of the Edison Light and Power Company and the \$16,000 which you said it cost to appraise the York Railways Company, the Steam Heat Company and the Bus Company?

Mr. Miles: For the purpose of the record I object to the form of the question, because the witness has never stated it cost \$70,000 to appraise the Edison property. There are a lot of items involved in that estimate which deal with matters other than appraisals of property.

The Commissioner: I will sustain the objection.

By Mr. Miller:

Q. Mr. Seelye, where did you obtain the figures as to the revenue reductions if the provisions of Section 305 are made effective? A. We have in our office a complete record of all billings in the various classifications. We made a computation on the basis of those billings. For the purpose of checking



*Theodore E. Seelye—For Respondent—Cross*

this we requested the company to make similar computation, and we find no difference. As a matter of fact the record which we have is obtained from their records, and it is not to be expected that there would be a difference, but we wished to verify the correctness of our figures.

Q. I believe you stated that there is a 95 cent service charge for residential users? A. Yes sir.

Q. Are there any other service charges? A. There are different charges on industrial power. We have not given consideration to that in this computation.

Q. Is energy sold for the demand charge? A. No,—under the industrial rate, you mean?

Q. Yes, that is right. A. No, the carrying or demand charge is aside entirely from the energy rate.

Q. I mean in connection with this company? A. No sir, it is a separate charge.

Q. It is a service charge then, is it not? A. I am not qualified to state that without an investigation of that phase of it. It might be part of the rate.

Q. Do you know what the position of the company is as to deposits? A. The company has deposits, has customers deposits. I think the amount of that is indicated in the statements which have been submitted in evidence at various times.

Q. But did you make any study of the deposit situation to determine how many deposits would have to be refunded under the provisions of Section 305? A. No sir, there has not been time to do that since this section of the law was brought to our attention.

Mr. Miller: That is all.

*Theodore E. Seelye—For Respondent—Redirect*

*Redirect Examination*

By Mr. Miles:

Q. You said a minute ago that the company had a 95 cent service charge applicable to residential consumers? A. Yes sir.

Q. A similar charge on bulk or commercial? A. To light rates.

Q. The \$310,000 figure which you have given covers residential and commercial? A. It covers all service charges except demand charges on industrial power, small power.

By Mr. Miller:

Q. Mr. Seelye, there is one matter of information which the Commission requested you to furnish which we don't have, and that is the break-down of the \$47,600 figure relating to conduits and cables in the central station of the respondent company? A. Mr. Miller, I think that was sent in.

(Remarks by Mr. Miller at his request off the record.)

The Commissioner: Will you make a check and supply it for the record if it is not in.

Mr. Miller: That is all, Mr. Seelye.

The Commissioner: Have you any other witnesses, Mr. Miles?

Mr. Miles: The respondent submits its case reserving only the right to offer testimony in rebuttal to that which may be presented by counsel for the Commission.

The Commissioner: You have nothing further to say in response to the order of the Commission as to the temporary rate.

Mr. Miles: No sir, because we have made a complete showing and we believe we have covered that subject.

The Commissioner: You rest on that with your request for argument before the whole Commission.

*Colloquy*

Mr. Miles: I rest on that as limited by my remarks earlier in the day.

The Commissioner: Now, we will return to the formal rate case.

Mr. Miles: Your Honor does not mean to suggest by that last remark that what has been offered up to date is not part of the record?

The Commissioner: Not at all, but I say as to the temporary feature of the case the matter is closed, and we will return to the formal rate case.

Mr. Miller, have you anything?

Mr. Miller: Yes sir, we have three matters, accounting matters, concerning which we requested information from the company, and I am advised that we don't have the information on that. The first request appears at page 1174 of the testimony and relates to details regarding payment of \$913.80 to Stone and Webster in 1936. The purpose of that request is to obtain the break-down of that figure and any consideration for the payment.

The Commissioner: Let us take those as they occur. Mr. Miles, if that is not in the record will you engage to have that question answered?

Mr. Miller: The company has agreed to furnish that information.

The Commissioner: You stand on that.

Mr. Miller: Yes sir, I am merely calling their attention to it at this time.

The Commissioner: Read it into the record.

Mr. Miller: At page 1176 we requested the amount of uncollectible accounts written off during the year ending December 31, 1936. Also the amount recovered each year from the accounts previously written off.

At page 1177 we request the transmission system expenses applicable to the conversion of power from al-

*H. Root Palmer—For Complainant—Direct*

ternating current to direct current for power used by York Railways Company.

The Commissioner: Do you have a witness?

Mr. Miller: Yes sir; I have three witnesses.

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H. ROOT PALMER, recalled.

*Direct Examination*

Mr. Miles: With respect to two of Mr. Miller's three requests I am afraid we cannot give any more information than we have already given, because it is all disclosed by the company's records.

The Commissioner: Will you in your reply state why you cannot. Will you do that through your accountants or engineers as the case may be, and if it is impossible let us have that in writing for the record.

Mr. Miles: Do you mean to suggest that the orderly way to do that is to let us furnish in writing such part of this as we can and an explanation as to why we cannot furnish the balance with the understanding that it will be made a part of the record in this case.

The Commissioner: That is right.

Mr. Miles: That is quite satisfactory.

By Mr. Miller:

Q. Mr. Palmer, did you present Complainant's Exhibit No. 18? A. Yes sir.

Q. And upon what was that based, Mr. Palmer? A. Exhibit No. 18 was based upon the Day and Zimmerman appraisal as of June 30, 1934.

Q. And will you give me in a few words what the exhibit shows?

*H. Root Palmer—For Complainant—Direct*

Mr. Miles: Which exhibit are you referring to?

Mr. Miller: Exhibit No. 18.

The Witness: That exhibit included Accounts Nos. 204, to 215 in the steam generating system group, composed of land, structures, railroad sidings and so forth, boiler plant equipment, steam engines, turbines, turbo generators, other electric generators, other electric equipment, coal storing and weighing equipment, other power plant equipment—

Mr. Miller: I believe I asked Mr. Palmer about Exhibit No. 18. I meant to ask him about Exhibit No. 17.

By Mr. Miller:

Q. Mr. Palmer, did you submit Complainant's Exhibit No. 17? A. I did.

Q. Will you state briefly what Complainant's Exhibit No. 17 shows? A. Exhibit No. 17 is a summary of the reproduction cost estimate as of June 30, 1934, Day and Zimmerman report No. 3024.

Q. And upon what was the Exhibit No. 17 based? A. Upon the reproduction cost of Day and Zimmerman.

Q. Shown by what appraisal of Day and Zimmerman? A. June 30, 1934.

Q. After the submission of Exhibit No. 17 in evidence did the respondent company present a later appraisal by Day and Zimmerman? A. They did.

Q. And as of what date was that appraisal made? A. November 30, 1936.

Q. Have you revised Complainant's Exhibit No. 17 to correspond to the Day and Zimmerman appraisal of November 30, 1936? A. I have.

Summary of reproduction cost estimate as of November 30, 1936, from page 1 of report No. 3224, Day and

*H. Root Palmer—For Complainant—Direct*

Zimmerman, Inc., produced and marked Complainant's Exhibit (revised) No. 17, E.E.M., 6/23/37.

By Mr. Miller:

Q. I show you a paper marked Complainant's Revised Exhibit No. 17, and ask you if that is the revision to which you referred? A. It is.

Q. Are all of the figures appearing on Revised Exhibit No. 17 figures placed in the record as a part of the Day and Zimmerman appraisal of November 30, 1936? A. They are.

Q. Now none of those figures have been altered or adjusted by you? A. They have not.

Mr. Miller: I offer in evidence Complainant's Revised Exhibit No. 17 to take the place of Complainant's Exhibit No. 17.

Mr. Miles: No objection.

By Mr. Miller:

Q. Now, Mr. Palmer, did you submit Complainant's Exhibit No. 18? A. I did.

Q. Will you state briefly what that exhibit shows? A. The reproduction cost new less depreciation based upon the Day Zimmerman appraisal as of June 30, 1934.

Q. Have you found it necessary to revise Exhibit No. 18 on the basis of the appraisal of November 30, 1936 by Day and Zimmerman placed in evidence by the respondent company?

Mr. Miles: Just for the purpose of clarity, Mr. Miller, would you be good enough to refer to page numbers of Exhibit 18 that are being revised. There are about ten pages in that exhibit.

(Last question read)

The Witness: Sheet No. 1.



*H. Root Palmer—For Complainant—Direct*

By Mr. Miller:

Q. Will you answer that question yes or no, please? A. I have.

Q. Will you state in what respect you have found revision necessary? A. Changes in the appraisal made by Day and Zimmerman as of November 30, 1936 as compared with June 30, 1934.

General Plan of Property, Steam Station, Edison Light and Power Company, (16 sheets) produced and marked Complainant's Revised Exhibit No. 18, E.E.M., 6/23/37.

By Mr. Miller:

Q. Mr. Palmer, I show you a number of sheets joined together, sixteen, marked Complainant's Revised Exhibit No. 18, and ask you if that is the revision to which you referred? A. It is.

Q. What was the purpose of preparing the revision? A. The revised paper was prepared in order to correspond with the figures in the Day and Zimmerman appraisal.

Mr. Miller: I offer Revised Exhibit No. 18 in evidence in substitution of and correction and adjustment of Exhibit No. 18.

The Commissioner: Have you offered Revised Exhibit No. 17?

Mr. Miller: Yes sir.

The Commissioner: Any objection?

Mr. Miles: No sir.

The Commissioner: Revised Exhibits 17 and 18 will be accepted for the record.

*L. C. Bierman—For Complainant—Direct*

*Cross Examination.*

By Mr. Miles:

Q. Mr. Palmer, as I understand it, Complainant's Exhibit No. 18 is revised for the purpose of exhibiting the estimates of reproduction cost new less accrued depreciation of the property described on that exhibit as found by Day and Zimmerman as of November 30, 1936? A. Yes sir.

Q. That is a summary of the reproduction cost new, is it not, as of that date? A. Yes sir.

Q. I ask you whether in your opinion the estimates of reproduction cost shown on that Exhibit 17 revised, and Exhibit 18 revised are reasonable estimates of the reproduction cost of the property listed thereon as of November 30, 1936? A. The unit prices have not been checked with the Day and Zimmerman appraisal.

Q. Have you any opinion as to whether their estimates are reasonable or not? A. I have not without checking.

Q. You have not? A. Not without checking.

Q. But you have accepted them for the purpose of your own exhibit? A. I used them as presented by Day and Zimmerman.

Q. And you made no independent estimates of your own? A. I have not.

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L. C. BIERMAN, recalled.

*Direct Examination*

By Mr. Miller:

Q. Mr. Bierman, did you submit Complainant's Exhibit No. 21? A. Yes sir.

Q. Will you state briefly what that exhibit shows? A. Exhibit No. 21 showed the recap of Mr. Palmer's exhibit.

*A. C. Bierman—For Complainant—Direct*

Q. Now, in general, Mr. Bierman, what does it show? A. It shows the recap of Mr. Palmer's exhibit, steam generating stations. The balance of the exhibit being the figures shown in the Day and Zimmerman appraisal as of 1934, plus overheads, indirect costs which I placed on those figures.

Q. Have you found it necessary to revise Complainant's Exhibit No. 21 in the light of a later appraisal by Day and Zimmerman? A. Yes sir.

Q. What is the date of that later appraisal? A. November 30, 1936.

Summary of reproduction cost estimate as of November 30, 1936, from page 1 of report No. 3234—Day and Zimmerman, Inc., with deductions from Accounts 204-215, inclusive, for property used for steam production, property not used or useful, and property used exclusively for York Railways Company, and with adjustments in allowances for indirect costs produced and marked Complainant's Revised Exhibit No. 21, E.E.M., 6/23/37.

By Mr. Miller:

Q. I show you one sheet marked Complainant's Revised Exhibit No. 21, and ask you if that is the revision prepared by you as testified to by you? A. Yes sir.

Q. Will you state briefly what revisions you have made? A. The revisions have been in Accounts 204 to 215, steam generating system.

Q. And why were those revisions made? A. Due to the difference in price levels; due to the difference in appraisals.

Q. Were they based on Mr. Palmer's adjusted figures? A. They were.

Q. Proceed. A. The indirect costs, the percentages are the same as applied formerly. Working capital is changed, based

*L. C. Bierman—For Complainant—Cross*

on the operating expenses as shown in the annual reports for 1936, less accrued depreciation and taxes, that is, the 1½ month period expenses, the materials and supplies as shown in the annual report.

Q. Well, aside from those changes are the figures appearing in Complainant's Revised Exhibit No. 21, taken from the Day and Zimmerman appraisal of November 30, 1936? A. Yes sir.

Mr. Miller: I offer Complainant's Revised Exhibit No. 21 in evidence, Mr. Commissioner.

The Commissioner: Any objection?

Mr. Miles: No sir.

The Commissioner: Revised Exhibit No. 21 will be accepted for the record.

*Cross Examination*

By Mr. Miles:

Q. Mr. Bierman, this preparation of your revised Exhibit No. 21, have you considered any change in price levels since November 30, 1936? A. No, I have not.

Q. In your opinion has there been any increase in unit costs for labor, materials, property accounts shown on this revised Exhibit No. 21 since November 30, 1936? A. There have been.

Q. You think there has been an increase? A. Yes sir.

Q. And to the extent of such increase the estimated cost of reproduction new which is shown on this exhibit should be increased, should it not? A. Yes sir.

Mr. Miller: I will now call Mr. McShea on rate of return.

*R. A. McShea, Jr.—For Complainant—Direct*

R. A. McSHEA, JR., recalled.

*Direct Examination*

Mr. Miller: Prior to presenting testimony of this witness, if the Commission please, I desire to offer in evidence by reference certain pages of the annual reports of the respondent company as filed with the Commission for the 14 years beginning 1923 and ending 1936.

The pages are as follows: for 1923, pages 1 and 2, which are balance sheets; page 10, operating revenues; page 20, income account; page 24, dividends; page 27, classification of consumers.

For the years 1924 to 1933 inclusive, pages 202 to 203, balance sheets; 301, income statement; 305, operating revenues; 321, dividends; 403, classification of consumers.

For the years 1933 to 1936 inclusive: pages 202 to 203, balance sheets; page 301, income statement; page 305, operating account; page 317, dividends; page 402, classification of consumers.

Mr. Miles: No objection.

The Commissioner: It will be received for the record.

Mr. Miller: The last bracket of years should be 1934 to 1936 inclusive.

Mr. Miles: We understand the introduction by reference is permitted for any purpose in the case, and is not confined to rate of return.

Mr. Miller: That is perfectly satisfactory.

By Mr. Miller:

Q. You have already testified on your experience, in this record, since coming with the Public Service Commission in 1926. Will you briefly state what you did prior to coming with

*R. A. McShea, Jr.—For Complainant—Direct*

the Commission? A. From January 31, 1919 to November 21, 1926 I was a member of the Accounting staff of Peat, Marwick, Mitchell and Company—

Mr. Miles: We accept the witness' qualifications as a Public Utility Accountant.

Mr. Miller: I propose to ask Mr. McShea to present an analysis prepared by him of rate of return on various classes of securities of electric companies and other companies. If his qualifications are admitted for that purpose, all right.

Mr. Miles: We accept his qualifications as a Public Utility Accountant.

The Commissioner: Suppose you go on and qualify him.

Mr. Miles: I don't know what it is you propose to offer.

The Commissioner: Let us have it for the record.

The Witness: I was a member of the accounting staff of Peat, Marwick, Mitchell and Company in their Philadelphia office. This is an international firm of Certified and Chartered Accountants, with headquarters in London and New York.

By Mr. Miller:

Q. What were your duties while with that firm? A. The early years, or up to about the early portion of 1923, I was a Junior Accountant and assisted in audits and investigations of manufacturing, mercantile and financial institutions. From 1923 I was a Senior Accountant and had charge of the various audits and investigations to which I was assigned, except in some instances where it was necessary to have a large staff on one assignment, when several senior accountants and juniors were put on the work under a supervising accountant.



*R. A. McShea, Jr.—For Complainant—Direct*

Q. What experience did you have on financial work while in public accounting? A. I assisted in numerous plant examinations and numerous stock brokerage house examinations.

Q. Will you name some of the banks and brokerage houses which you examined? A. The banks were: The Franklin Trust Company, Philadelphia. I was on that about six times; Wilmington Trust Company, Wilmington, Delaware, about four times;

Liberty Title and Trust Company, Philadelphia;  
National Bank of Catasauqua, Catasauqua, Pennsylvania;  
Oxford Bank of Frankford. This bank later became the Franklin Trust Company, or a part of it;

Kingston Bank and Trust Company, Kingston, Penna.;  
Saving Fund Society of Germantown; I was on that about five times;

Citizens' Trust Company, Allentown, Penna.;  
First National Bank, Youngstown, Ohio;  
Dollars Savings Bank, Youngstown, Ohio.  
The brokerage houses were: F. P. Risking Company, Philadelphia;

Laird, Bissel and Meeds, Wilmington, Delaware;  
Toland, Trimble and Company, Philadelphia;  
Redmond and Company, Philadelphia;  
Barclay, Moore and Company, Philadelphia;  
Chandler Brothers and Company, Philadelphia.

Q. Did you have occasion to examine certain of these brokerage houses more than once? A. A great many of them.

Q. What other work did you do in public accounting? A. During the period from 1923 to 1926, I specialized in Federal and State taxes. This work was done each year, principally from January to June. The tax work covered the preparation of returns and special work in connection with claims for abatement and refunds for manufacturing, banking, brokerage and mercantile houses, as well as for individuals, partnerships and estates.

*R. A. McShea, Jr.—For Complainant—Cross*

Q. Have you examined any financial institutions during your employment by the Commission? A. Yes, in 1931 I examined the accounts of the Investment Banking House of Furland, Reuter and Company in New York in connection with the initial financing of Duquesne Gas Corporation. I subsequently testified in the Federal Court of New York on the results of my examination.

Mr. Miller: I propose to have Mr. McShea testify that he has made a study of security yields, money rates and related matters for the purpose of providing information which will enable the Commission to determine the rate of return to be allowed on the fair value of respondent's property.

You may cross examine as to his qualifications.

*Cross Examination*

By Mr. Miles:

Q. Mr. McShea, have you ever had any experience in connection with the operation or financing of public service corporations?

Mr. Miller: Mr. Miles, I am not offering Mr. McShea as an expert on fair return. I am offering him to testify as to the study he has made on security yields, money rates and such matters.

Mr. Miles: I understand that.

By Mr. Miles:

Q. Have you had any experience with respect to the operating or financing of public service corporations? A. Not except what experience I mentioned with the Commission since 1926.

Q. You have never been called upon to participate in nego-

*R. A. McShea, Jr.—For Complainant—Direct*

tiations for the purchase of public utility securities, have you? A. I have never negotiated with the bankers or anybody connected with bankers, but I have participated in numerous conferences in connection with the filing of certificates of notification and applications for approval of security issues, conferences between the companies and representatives of the Commission.

Q. That is the certificates that they are required to file with this Commission? A. That is right.

Mr. Miles: That is all.

The Commissioner: Do you accept the witness as to his qualifications?

Mr. Miles: I stated that I accepted his qualifications as a Public Utility Accountant. That is as far as we are willing to go.

The Commissioner: You will not accept his qualifications for the purpose as outlined?

Mr. Miles: I cannot answer that until I hear the qualifications of Mr. McShea. I accepted his qualifications as a Public Utility Accountant.

The Commissioner: You don't object to his qualifications at this time?

Mr. Miles: Not at this time.

By Mr. Miller:

Q. What is the meaning of the words, "fair return"?

Mr. Miles: I object to that very definitely. That is a question of law which the Supreme Court has been arguing about for twenty years.

Mr. Miller: I am asking him to give his definition of the words, "fair return".

Mr. Miles: This definition of rate of return, we object to the form of the question.

*R. A. McShea, Jr.—For Complainant—Direct —*

The Commissioner: Objection overruled; exception noted.

The Witness: Return is in my opinion—

The Commissioner: Fair return, was the question.

The Witness: I am leading up to that, Mr. Commissioner. The return is the amount of revenues remaining after providing for all operating expenses, taxes and depreciation. The fair return is the amount declared by a regulatory authority to be a proper remuneration on the capital employed in the business. This capital is represented by the fair value of the used and useful property.

By Mr. Miller:

Q. Mr. McShea, have you prepared exhibits showing the yields of public utility, industrial, railroad, municipal and government bonds over a period of years? A. I have.

Bond yields as reported by "Survey of Current Business," issued by United States Department of Commerce (3 sheets), produced and marked Complainant's Exhibit No. 32, E. E. M., 6/23/37.

By Mr. Miller:

Q. I show you a tabulation consisting of three sheets marked Exhibit No. 32 and ask whether they were prepared by you? A. They were.

Q. What does that exhibit show? A. Exhibit No. 32, sheets 1 and 2, show average yields on corporate and municipal bonds from 1913 to January, 1937, as reported by "Survey of Current Business," a publication of the United States Department of Commerce.

Q. To what month in 1937? A. January, 1937.

Q. Proceed. A. It also shows yields on United States

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Treasury bonds from 1926 to January, 1937. The foot notes on sheet 2 were taken from page 165 of the 1936 supplement of "Survey of Current Business" in explanation of the manner in which the yields were computed, also by whom they were computed.

Sheets 1 and 2 are self-explanatory and show the monthly average yields during the period covered. It shows that the trend of yields on all issues, including corporate, municipal and government bonds, have been generally lower in the years 1934, 1935 and 1936 than in any of the other years shown by the exhibit. For instance, the monthly average yields on the fifteen public utility issues, as shown by column D, was 4.02 percent in 1936, 4.31 percent in 1935 and 4.62 percent in 1934. These yields are lower than the yields in any year from 1933 back to 1913, except in 1931, when the yield was 4.60 percent. The yields for the forty-five corporate issues consisting of fifteen industries, fifteen public utilities and fifteen railroads, as shown by column B, were 4.27 percent in 1936, 4.62 percent in 1935 and 4.86 percent in 1934. The yields in 1935 and 1936 were lower than the yields in any prior year going back to 1913. The average yields on fifteen municipal issues were 2.68 percent in 1936, 3.16 percent in 1935 and 3.95 percent in 1934. These yields were lower than the yields in any prior year back to 1913, except in 1916 when the average yield was 3.94 percent. The average yield on the United States Treasury Bonds, shown by column H, were 2.47 percent in 1936, 2.70 percent in 1935 and 3.10 percent in 1934. The yields were lower than the yields in any previous year back to 1926.

Q. What is shown by sheet 3 of Commission's Exhibit No. 321 A. Sheet 3 of this exhibit is a statement of yields on 120 corporation bond issues. This information was taken from the weekly issues of the "Commercial and Financial Chronicle," which in turn obtained it from Moody's Investment Service. This sheet shows the trend in bond yields during the five calen-

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dar years from 1932 to 1936, inclusive; for the first three months of 1937 and about three weeks of April, 1937. It will be noted that the yields in 1935, 1936 and 1937 were generally lower than the yields in 1932, 1933 and 1934. The yields on the forty public utility issues, as shown by column E, were below 4 percent in 1936 and to April 23, 1937, except in the first quarter of 1936 when the average yield reached 4.07 percent, and in April, 1937, when it reached 4.04 percent.

Q. Have you made a study of yields on securities issued by Pennsylvania utility corporations during recent years? A. I have.

Statement showing yields to maturity of security issues, approved between July 1, 1933 and May 7, 1937, which were for a term of ten years or more, bore a fixed return in dollars were of a type generally marketable, and were actually sold for cash to non-affiliated interests, produced and marked Complainant's Exhibit No. 33, E.E.M., 6/23/37.

By Mr. Miller:

Q. I show you a statement marked Commission's Exhibit No. 33 and ask if it reflects the result of your study? A. It does.

Q. By whom were the yields shown in this exhibit calculated? A. This exhibit was prepared by securities Examiner Dunlap, who is employed in Commission's Bureau of Accounts, Rates and Statistics. The yields were also calculated by him.

Q. Will you explain the exhibit? A. This exhibit is a statement showing yields to maturity of securities approved by the Commission between July 1, 1933 and May 7, 1937, which were for a period of ten years or more, or had a fixed return in dollars and were of a type generally marketable and were actually sold for cash to non-affiliated interests. The



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exhibit shows the names of the issuing companies, date of Commission approval, date of maturity, coupon rate, public offering price, face amount offered public and yield to maturity. The yields were computed from the interest date nearest to the date of actual sale where date of sale was known; otherwise from interest date nearest to date of Commission approval. The security issues covered by this exhibit met all of the following specifications while all issues approved during the period but not meeting such specifications were excluded:

1. Being for a term of not less than ten years.
2. Having a fixed return in dollars.
3. Being of such type that it can be sold by public offering. Straight mortgages on single pieces of realty were excluded.
4. Having been sold by cash either to the general public or to other investors, such as insurance companies not affiliated with the issuing corporations.

Q. Have you prepared statements showing yield on bonds and preferred stocks of Pennsylvania Electric Utilities based on recent prices? A. I have.

Bond prices and yields Pennsylvania Electric utilities (4 sheets), produced and marked Complainant's Exhibit No. 34, E. M. M., 6/23/37.

By Mr. Miller:

Q. I show you four sheets marked Commission's Exhibit No. 34 and ask if they contain the results of your study? A. They do.

Q. Will you explain Exhibit No. 34? A. Sheets 1 and 2 of this exhibit contain a list of the bonds of Pennsylvania electric utilities, outstanding as of December 31, 1936, for

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nearly all electric companies that had annual gross revenues in excess of \$50,000. These sheets include all of the bonds for which I was able to obtain recent prices. Column A shows the name of the issuing utility and a description of the bonds, column B shows the coupon interest rate, column C the amount outstanding December 31, 1936, column D the maturity dates, column G the most recent price obtainable at the time the exhibit was prepared and column H shows the yield to maturity. Column E shows the sources from which the prices were obtained and column F shows the dates of the various prices. For those bonds which were traded on one of the stock exchanges, I obtained the sale prices for June 10th, where there had been transactions on June 10th. If I was unable to get prices as of June 10th, I attempted to get the prices for the other days in the same week. If I was unable to get actual sale prices during that week, I then obtained bid prices. All of the prices shown here whether sale price or bid price are for some day in that week of June 10th. I may state in four or five instances in which I had considerable difficulty in getting prices, and in those cases I was able to get prices as of February 27th. These prices as of February 27th may not actually be the last, but they were the last I could find.

Q. Will you state what is shown by sheet 3 of Exhibit No. 34? A. Sheet No. 3 of Exhibit 34 contains the same information with respect to preferred stock of Pennsylvania electric utilities. The prices were obtained in the same manner as in the case of the bonds and generally from the same sources. The yields as shown by column H were calculated from the prices indicated in column G.

Q. Did you calculate those yourself? A. They were calculated by someone in Mr. Dunlap's department, security Examiner Dunlap, and of course, I don't say that Mr. Dunlap checked everyone of the calculations made.

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Q. Proceed with sheet 4, Exhibit No. 34? A. Sheet No. 4 is a statement showing financial earnings data for the companies covered by sheets 1, 2 and 3 for the year 1936 as shown by the annual reports. It reflects book values on fixed capital. The capitalization is segregated between bonds, preferred stock and common stock, the interest available for amortization, the interest and amortization requirements, income available for the deferred dividends and the preferred dividend requirements. It also shows the number of times each company earned its interest and preferred dividend requirements.

Q. Have you prepared an exhibit showing New York money rates in recent years? A. I have.

New York money rates from January 1, 1932 to April 23, 1937, produced and marked Complainant's Exhibit No. 35, E. E. M., 6/23/37.

Mr. Miles: We will object to this. I think it is all very competent testimony, but just what is the relevancy of it, Mr. Miller?

Mr. Miller: Why, the courts have held that money market rates have a very substantial bearing on rate of return.

Mr. Miles: As of dates prior to the date of the Commission inquiry?

Mr. Miller: Yes, I take it a picture over a period of years is very relevant.

The Commissioner: Do you object?

Mr. Miles: No sir, we will wait until we see what the exhibit is.

By Mr. Miller:

Q. I show you a statement marked Exhibit No. 35 and ask you if that is the tabulation to which you referred? A. It is.

Q. Will you explain the exhibit? A. Exhibit No. 35 shows

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interest rates in effect during the five years from 1930 to 1936, inclusive, and to April 23, 1937 on call loans, time money and commercial paper, as reported by the "Commercial and Financial Chronicle."

Q. Have you ascertained the interest rates paid by banks on savings accounts in New York during the past ten years? A. I have.

Q. Where did you obtain that information and what was the information? A. From Mr. Doty, Deputy Secretary of Banking of the Commonwealth of Pennsylvania.

Q. Will you state what the rates paid were? A. The rates paid on certificates of deposit during the period from April 1928 to 1933 was  $3\frac{1}{2}$  percent; on savings accounts the rate was 3 percent;

In 1933 the rate on certificates of deposits was 3 percent, and on savings accounts it ranged from  $2\frac{1}{2}$  to 3 percent;

In 1934 the rate on certificates of deposits was 3 percent, and on savings accounts  $2\frac{1}{2}$  percent;

From 1935 to June 21, 1937, the rate on certificates of deposits was  $2\frac{1}{2}$  percent and on savings accounts it was 2 percent.

Mr. Miles: Those several rates are fixed by Government regulation, you know that?

The Witness: I assume that has a little to do with it.

By Mr. Miles:

Q. Are they not fixed by Federal regulation? A. I don't know whether that is true. This covers state banks operating in York, Pennsylvania.

By Mr. Miller:

Q. Have you made a study of earnings applicable to the common stocks of corporations? A. I have.

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Corporation profits, earnings on common stocks arranged according to ratios of earnings to high market prices of common stocks, produced and marked Complainant's Exhibit No. 36, (20 sheets) E.E.M., 6/23/37.

By Mr. Miller:

Q. I show you 20 sheets collectively marked Exhibit No. 36, and ask whether they contain the results of your study? A. They do.

Q. Will you state generally the sources from which you obtained the information contained in Exhibit No. 36? A. This study was divided into three parts; first, I referred to the early 1937 issues of the "Annalist," which is a journal of finance, commerce and economics published weekly by the New York Times Company, from which I ascertain the stock market prices and earnings or losses per share on common stocks of 163 corporations. The details of this study are shown on sheets 5 to 9 of this exhibit. I arranged the companies shown by these sheets according to various types of corporations; for instance, automobile manufacturing companies were placed in one group, shoe companies were put in another group, public utilities were placed in another group and so on. The groupings are identical with those made by the "Annalist," except in two instances; in the automobile group the "Annalist" in reporting the 1936 earnings included Studebaker and Yellow Truck and Coach. I could not set up comparative earnings of these two companies for the entire five year period covered, therefore, I substituted Mack Truck and White Motors. The "Annalist" up to April 9th, did not report the collective earnings of the steam railroads, so I added a group for them consisting of twenty-five of the largest railroads in the country. On sheets 5 to 9 are shown the high and low market prices for each of the five years from 1932 to 1935, the earnings or losses per share and the ratios of the earnings to the market prices.

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In addition, I show the closing market price as of April 3, 1937 and the ratio of the 1936 earnings thereto. The prices and earnings for the period from 1932 to 1935 were taken from "Moody's Investment Manual" and the prices and earnings for 1936 and the closing prices as of April 3, 1937 were taken from the "Annalist" issue of April 9, 1937. The second part of the study, as reflected in detail on sheets 12 to 20, was entirely prepared from the April 9, 1937 issue of the "Annalist." This part of Exhibit No. 36 reflects the 1935 and 1936 earnings per share, the high and low market prices for these two years and the April 3, 1937 closing prices, together with the ratios of earnings to prices for 411 additional corporations, none of which are included on sheets 5 to 9. I made no attempt to classify these 411 corporations according to their respective types.

The third part of this study, as reflected by sheets 10 and 11, of Exhibit No. 36, consisted of preparing copies of tabulations of corporate profits as reported on page 54 of the 1936 supplement and on page 34 of the March, 1937, issue of "Survey of Current Business," publications of the United States Department of Commerce. The data contained on sheet 10 were obtained by the Department of Commerce from the Federal Reserve Bank of New York, and the data on sheet 11 were obtained by the Department from Standard Statistics Company, Incorporated.

Q. Now, will you turn to sheet No. 1, Exhibit No. 36, and explain what that sheet shows? A. Sheet 1, on lines 1 to 13, shows the extent of the earnings of 163 companies from 1932 to 1936, as related to the high market prices of the common stocks of those years and to obtain the closing price as of April 3, 1937.

On lines 14 to 26 are shown the same information for 411 companies for 1935 and 1936, and lines 27 to 39 show the combined figures for 574 companies for 1935 and 1936. This sheet



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was arranged to show the number of companies that had deficits in each year and also to show the number of the companies that had earnings equal to certain percentages of high market prices of the common stocks.

In column A is shown the basis of the classification of the companies; for instance, in column B, for the year 1932, it is shown that 82 of the companies covered had deficits, 6 companies earned between nothing and 1 percent, five companies earned between 1 percent and 2 percent and so on down to the five companies that earned over 10 percent. The earnings of these corporations materially increased during the five-year period. Where 50.9 percent of the companies had deficits in 1932, 9.9 percent had deficits in 1936. By deficits I mean that these companies failed to earn on the common stock. Line 7, sheet 1 shows in column D that 82 percent of the corporations earned less than 6 percent on the high market prices of the common stock in 1932, while in 1936, 71.6 percent earned less than 6 percent, as shown by column P. Based on the closing market price as of April 3, 1937, 56.8 percent earned less than 6 percent. The same information is summarized on sheet 1 for 411 unclassified companies in 1935 and 1936 and for April 3, 1937. The results for the 163 corporations in 1935 and 1936, and the 411 unclassified corporations in the same years are combined on lines 27 to 39, inclusive.

Q. Will you explain sheet No. 2 of the exhibit? A. Sheet No. 2 is identical with sheet No. 1, except that it shows the ratios of earnings to the low market prices for the period covered. Except in 1932 it will be seen that the majority of the companies earned more than 6 percent on the low market prices; and that in 1936, 30.4 percent of all the companies studied earned over 10 percent.

Q. Will you explain sheets 3 and 4? A. Sheets 3 and 4 were prepared for the purpose of ascertaining the ratios of

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earnings to the high and low market prices from the standpoint of an investor having an equal number of shares in each of the common stocks covered by the study. Sheets 3 and 4 do not show weighted averages, but were prepared upon the basis of the earnings per share related to the price of one share of stock in each corporation. For instance, on line 1 of sheets Nos. 3 and 4, there appear asterisks denoting a deficit for the 10 automobile companies in 1935. This is due to the fact that the Auburn Company and White Motors principally had deficits per share in 1935 in excess of the earnings per share of Chrysler, General Motors and others. By taking into account the greater number of outstanding shares of these larger companies, there would probably be total net earnings on the common stocks for the group as a whole. However assuming an investor to have an equal number of shares in the 574 corporations in 1935 and 1936, the earnings would have averaged 2.42 percent and 4.06 percent respectively on the high market prices, and the 1936 earnings on the April 3, 1937 price would have averaged 4.41 percent. On the low market prices as shown by sheet 4, the average earnings in 1935 and 1936 would have been 4.25 percent and 6.42 percent respectively.

Q. Will you explain sheets 5 to 9 in the exhibit? A. Sheets 5 to 9 show the high and low market prices, the earnings per share and the ratios of the individual earnings to the market prices for the 163 classified corporations.

Q. What is shown by sheets Nos. 12 to 20? A. Sheets 12 to 20 show the high and low market prices, the earnings per share and the ratios of the individual earnings to the market prices for the 411 unclassified corporations.

Q. Explain sheets 10 and 11? A. These sheets contain information copied from the 1936 supplement and March 1937 issue of "Survey of Current Business," relative to corporate profits, sheet No. 10, covering the period from 1928 to 1936 and sheet No. 11 covering 1924 to 1936. At the time sheet

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-10 was prepared, the figures were not reported for the fourth quarter of 1936, except for the railroads. The figures on sheet No. 10 are expressed in millions of dollars and the figures on sheet No. 11 are expressed in index numbers, 1926 being 100.

Mr. Miller: If the Commission please, we offer Exhibits 32 to 36 inclusive in evidence.

Mr. Miles: No objection.

The Commissioner: There being no objection they will be received in the record.

*Cross Examination*

Mr. Miles:

Q. Mr. McShea, referring to Exhibit No. 32, column D as shown on pages 1 and 2, can you state for the record the names of the fifteen public utility companies that comprise that group? A. No sir.

Q. You don't know who the companies were? A. This information came from the source I mentioned. I don't know the names of the companies.

Q. Is it possible to obtain that information? A. It may be; I didn't try.

Mr. Miles: We ask, if Your Honor please, that the Commission obtain that information for us.

The Commissioner: Is it possible, Mr. Miller? Will the witness furnish that information?

Mr. Miller: Yes, Mr. Commissioner, we think it is possible, the figures are put in as taken from an official Federal Government publication, and not as gathered by the witness.

The Commissioner: Let them be accepted with that reservation.

Mr. Miles: I am not suggesting that there is any im-

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propriety in it, but it might be fifteen nationally known companies, the cost of financing would be very much less.

Mr. Miller: We will try to get that information.

By Mr. Miles:

Q. But you don't know the name of any one of these fifteen companies, do you? A. I don't.

Q. Do you think that the size of the particular companies' valuations of their properties and their earnings are subjects that should be considered in determining whether the Edison Company would experience the same cost relative to its financing? A. Understand, Mr. Miles, I am not trying to state from this study that the Edison Company would experience the same cost. I am putting this in merely to show these general trends as reported by the United States Department of Commerce as far back as I could get it, in this case being 1913. Now, as far as the comparison with Edison Light and Power Company is concerned, I know nothing about that.

Q. Therefore, you have no information as to whether the yield shown in column D of Exhibit 32 was in any manner comparable to what it might cost Edison Light and Power Company to attract capital? A. What I understand this exhibit to show is that at the present time, or at least down to the early part of 1937, it would cost Edison Company less than it would have cost several years ago.

Q. Why do you say that when you don't even know the names of the fifteen companies involved? A. I assume the companies selected by the particular agency, in this case Standard Statistics, were at least comparable from their standard or from their viewpoint.

Q. Comparable to what? A. At least they selected comparable companies, or the same group of companies from one year to the next.

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Q. In other words, what you are saying is that you assume that they took the same group or same character of companies in the various years? A. That is right. Assuming from that information that they took fifteen particular companies in any one year, when they dropped a utility, in that case they would select a company that would take rank with the company they dropped.

Q. You say you have no knowledge as to whether any of the companies were comparable to the Edison Light and Power Company? A. That is right.

Q. Taking Exhibit No. 33, Mr. McShea, where you are confining yourself to known corporate entities, Pennsylvania utility corporations in some instances, can you tell us with respect to how many of the bond issues listed on Exhibit No. 33 the payment of the Pennsylvania four mill tax was assumed by the company and how many issues the bondholders are required to pay it? A. Of course, I can find out for you which of the companies assume the four mill tax in Pennsylvania, but in any event in the calculation of the yields that fact was disregarded, the reason for that being that ordinarily we find in most of the cases the bonds are sold or issued to persons or corporations who would not be required to pay the tax in any event, such as banks, insurance companies, persons resident outside of the state of Pennsylvania and so on.

Q. The point is that so far as the companies referred to on Exhibit No. 33 as having issued securities since January 1, 1937— A. 1933.

Q. I am confining my questions now to those that issued security since January 1, 1937, or January 1, 1936, you don't know in which instances the four or five or eight mill tax has been assumed and in which instances it has not, do you? A. Not at this moment.

Q. You agree with me that the question would have a very particular bearing on the cost of money to the issuing com-

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pany? A. Yes, it would if the corporation assumed the tax the other cost would be less.

By the Commissioner:

Q. Mr. McShea, could that information be obtained by you for the purpose of the record? A. I believe it could all be obtained.

Q. Will you furnish it for the record? A. Yes.

By Mr. Miles:

Q. Now, Mr. McShea, simply confining myself to Exhibit No. 33, can you give us any information as to the discount that was incurred by the issuing company at the time of the sale of the various securities referred to on the exhibit? To illustrate, have you any knowledge as to what the Scranton Electric Company was compelled to spend in the way of discount at the time it issued and sold certain securities which were approved by the Commission on March 3rd, 1937? A. What do you mean by discount?

Q. I mean did they get par, or did they get 97½, or did they get 96? A. The price the Corporation received?

Q. From the bankers? A. I can't give you any of that information for the 1937 companies, but I can get it for most of the other companies prior to 1937.

Q. Can you give it to us for some of the companies in the latter part of 1936? A. Pennsylvania Power Company, \$6,978,000, they received one hundred.

Q. That was \$6,978,000 issue, is that right? A. The corporation received one hundred, the price at which it was offered to the public. That particular issue was sold—

Q. The company received par for their 3½ percent—what was it, first mortgage bonds? Wasn't it a refunding operation where there was no expense incurred in the sale to banks? A. I will have to find that out for you.

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Q. Do you know who bought the Pennsylvania Power Company bonds? A. I think the issue was purchased by one or two large insurance companies privately. There was no public offering.

Q. Therefore, that would hardly be comparable to any hypothetical financing by Edison Light and Power Company?

A. Of course, conditions might be such that the Edison Light and Power Company may be able to sell privately also.

Q. That is it exactly. Isn't it the particular conditions in each situation that govern and not mere tabulation? A. Particular conditions have a great deal to do with the cost of money.

Q. You would not suggest that the Edison Light and Power Company could attract capital on the basis that Pennsylvania Power Company or Philadelphia Electric Company could? A. I am not attempting to show that. I am just attempting to show what the records show.

Q. Mr. McShea, in the course of your investigation of the issuance of securities by Pennsylvania public utilities, have you had occasion to acquire any knowledge as to whether it costs those companies any substantial sums of money to register such securities under the Securities Act of 1933? A. I have not made a detailed study of it, but I have inquired into one or two cases. I believe the Philadelphia Suburban Water Company, which is on this list—yes, they are on the list at Securities Docket No. 121, and I found that the cost there included the cost of registration with the Securities and Exchange Commission. Now, I think that was the minor part of the cost, but what ratio it was to the total I don't know.

Q. Did you make any inquiries into the cost of registration incurred by the Philadelphia Electric Company? A. No sir.

Q. It is a fact, is it not, that a company issuing securities to be publicly marketed under existing Federal laws is required

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to incur certain substantial expenses that didn't exist until the passage of the Federal Securities Act of 1933? A. I suppose they are substantial, but I made no check of it.

Q. Well, to the extent that they are incurred at all, it would be necessary for them to be reflected in the cost of money to the company? A. It would be a part of the cost of financing, yes sir.

Q. Mr. Keesey called my attention to the fact that on Exhibit No. 33 you have only shown the public offering price. Why didn't it occur to you to include a column which showed the price received by the company? A. Because the yields were computed from the public offering price.

Q. Therefore, it is not yield so far as cost to the issuing company is concerned? A. So far as cost goes to the company and the yield to the public it would be the same.

Q. Now, if the company gets  $97\frac{1}{2}$  and the public pays 102 does your last answer still stand? A. That is what the company gets.

Q. The company receives  $97\frac{1}{2}$  for a given issue of securities which were sold to the public at 101 maturity twenty years thereafter? A. That all depends on what accounts for the difference between the  $97\frac{1}{2}$  and 101. Part of that may be pure discount, and part of it may be cost of brokerage or something of that sort.

Q. The company does not get it in either instance, Mr. McShea, no matter what it is? A. Yes, but the company in a utility proposition it gets the cost of financing as part of the valuation.

Q. And you think the yield is the same in either instance to maturity? A. You mean whether you take  $97\frac{1}{2}$  or 101?

Q. That is right. A. I would say the interest cost is the same.

Q. The interest rate is the same? A. The cost to the company below the amount which the company pays would prob-

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ably be divided into two parts, one, cost of brokerage, the other discount. Now, brokerage would be part of the cost of financing in the fair value of the property and the discount would be part of the interest cost.

Q. Mr. McShea, what was the last date in 1937 that you used for the purpose of showing market quotations for the computation of yields? A. With respect to which exhibit?

Q. Any of them, all of them? A. June 10, 1937.

Q. With respect to what exhibit? A. I believe it was thirty-four—Exhibit 34.

Q. How about Exhibit 36? A. Exhibit 36 has to do with earnings on the common stocks of corporations.

Q. What I am trying to develop, to be quite candid about it, is whether you have made any study of the trend of the utility bond market since March 3, 1937? A. You mean the general trend?

Q. Yes: A. No sir. This work I might explain was general.

Q. Have you any information or any knowledge as to whether the trend of public utility securities, market wise has been upward or downward since 1937? A. The market price of public utilities I believe has been downward.

Q. Definitely? A. I don't know how much.

Q. Most of the companies whose stocks you referred to, the various issues on Exhibit No. 36, are companies whose stocks are listed on one of the larger public exchanges, are they not? A. There are a few, but I would not say most, Mr. Miles. I found that out when I looked for the prices.

Q. Is that so? A. Yes.

Q. In other words, there are a great many that are not? A. The bid price that I use there, the large majority, was because I could not find the transactions on the various exchanges.

Q. But there are lots of companies' stocks listed on the exchanges? A. Are you talking about stocks now?

Q. Yes, that was my question. A. Well, I would say possibly 40 percent are listed; maybe 35 percent.

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Q. Now, Mr. McShea, these exhibits that have been talked about here, namely 32 to 36 inclusive, were all prepared either by you or under your direction, were they not? A. Yes sir.

Q. I would like you to state to the Commission whether you feel that these exhibits in any manner reflect the cost of money to the Edison Light and Power Company if it were required to attract capital at this time? A. Mr. Miles, I am not testifying here as an expert on rate of return or cost of money, I am testifying merely as to what these various sources of information reflect.

Q. I don't think that answer is responsive.

Mr. Miller: That goes to the purpose for which I presented Mr. McShea, which was not as to rate of return, or what should be allowed to the Edison Company, but simply to show these facts from which the Commission could determine what the rate of return should be.

Mr. Miles: I think I am entitled to an answer.

The Commissioner: I think the question is proper to develop his opinion.

The Witness: Yes, I think these exhibits definitely show and give some information as to what the Edison Company might have to pay for money.

By Mr. Miles:

Q. Have you any opinion as to what Edison Company might have to pay for money under the existing circumstances?

A. No sir.

Q. You have no information as to what it might cost it. You are still of the opinion that these exhibits— A. Would be of assistance to the Commission.

Mr. Miles: That is all.

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By Mr. Miller:

Q. Mr. McShea; just one question: Is bond discount a part of the interest rate of the issue? A. Pure discount, yes, is a part of the interest.

Q. Now, how do you distinguish between pure discount—  
A. I think Mr. Miles and I discussed it, and I think I answered that.

The Commissioner: It was analyzed a minute ago.

Mr. Miller: I just wanted to clear it up if there was any possible misunderstanding.

By Mr. Miller:

Q. Then discount is not the same as brokerage; is it? A.  
No sir.

Mr. Miller: Mr. Commissioner, the Commission rests its case.

Mr. Miles: We have no rebuttal testimony, if Your Honor please.

The Commissioner: Mr. Miles, and your associate counsel and Mr. Miller, I will present the request of counsel for the company to the Commission. In the event that the Commission grants the request, will you be prepared to argue a week from Tuesday?

Mr. Miles: We would be prepared.

Before you adjourn, Mr. Commissioner, there are two things we would like some advice and instruction about. Of course, the rules of the old Commission presumably no longer exist, at least so far as I know they no longer exist, but I suppose the Commission is going to allow us a certain time within which to prepare and file briefs in this case.

The Commissioner: Oh, yes.

Mr. Miles: The Commission is going to set it down in the ordinary course of events.



*Colloquy*

The Commissioner: Certainly.

Mr. Miles: That is a matter to be disposed of later.

The Commissioner: The important question is the question of argument before the full Commission, and you will be advised of that.

Mr. Miles: We have found, which of course, is no reflection upon the very capable reporters, because lawyers sometimes speak indistinctly, that we have a great many inadvertent errors in this record, just as Mr. Miller has found. We have gone over the record and made all of our corrections, and I should like some instruction from the Commissioner as to how those corrections can be inserted.

The Commissioner: Let me suggest that the corrections be submitted to counsel for the Commission, and since Commissioner Stahlnecker of the old Commission sat at the hearings if any of the corrections involve any ruling by the then sitting Commissioner—

Mr. Miles: They are not that sort of corrections, Mr. Commissioner. They are merely corrections of words and figures, things of that sort.

The Commissioner: Let me suggest then that the corrections be submitted to counsel Miller, and if there be agreement by both sides on the corrections, they may be made.

Mr. Miller: We will do the same with our set of corrections, we will submit them to Mr. Miles.

The Commissioner: That is all right.

Mr. Miller: Just to complete the record we would like to have the kilowatt hours purchased by the respondent company from Metropolitan Edison Company and from Pennsylvania Water and Power Company divided between the purchases from these companies.

*Colloquy*

We have it, I believe, for the first six months of 1936, and we would like to have that record carried on for the full year 1936. It relates to the power factor computations.

Mr. Miles: We will furnish it.

Mr. Miller: The only other matter, Mr. Commissioner, is the scope of the argument on July 6th, which as I understand it is to be limited to temporary rates.

The Commissioner: That is the understanding. There was a request made by the sitting Commissioner for the inclusion in the record of work notes on the testimony by one of the witnesses. Has that been done? Was that by you, Mr. Seelye?

Mr. Reed: The work notes were sent to Mr. Miller, and in his hands the following Monday.

Mr. Miles: Let the record show that they were furnished within the time designated.

Mr. Miller: Yes.

The Commissioner: The hearing stands adjourned.

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hereby certify that the proceedings and evidence are condensed fully and accurately in the notes taken by me during hearing on the above cause before the Pennsylvania Public Utility Commission of the Commonwealth of Pennsylvania, that this copy is a correct transcript of the same.

E. E. MOYER  
Official Reporter

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[fols. 988-1093a]

## COMMISSION EXHIBIT No. 17 (REVISED)

## Edison Light and Power Company

Summary of reproduction cost estimate as of November 30, 1936, from page 1  
of report No. 3234—Day and Zimmerman, Inc.

Acct. No.	Description	Estimated Cost of Reproduction	
		New	Less Accrued Depreciation
	Undistributed Fixed Capital:		
200	Organization.....	\$68,812	\$68,812
	Steam Generating System:		
204	Land.....	44,137	44,137
207	Structures.....	221,898	214,500
208	Railroad Sidings and Trestles.....	338	321
209	Boiler Plant Equipment.....	338,932	281,827
210	Steam Engines and Turbines.....	82,945	43,869
211	Turbo Generators.....	154,972	126,724
212	Other Electric Generators.....	147,718	85,407
213	Other Electric Equipment.....	277,508	180,380
214	Coal Storage and Weighing Equipment.....	23,714	18,971
215	Other Power Plant Equipment.....	10,510	9,086
	Transmission System:		
237	Land.....	11,485	11,485
239	Rights of Way.....	1,486	1,486
240	Transmission System Structures.....	22,613	22,277
241	Substation Equipment.....	465,883	434,432
242	Poles and Fixtures.....	70,543	63,489
243	Overhead Conductors.....	102,095	96,990
244	Overhead Telephone System.....	841	799
245	Underground Conduits.....	14,302	13,587
246	Underground Conductors.....	8,183	7,774
	Distribution System:		
251	Rights of Way.....	846	846
256	Poles and Fixtures.....	520,559	468,503
257	Overhead Conductors.....	436,446	414,624
258	Overhead Transformers.....	377,355	345,152
259	Overhead Transformer Installations.....	37,281	35,296
260	Overhead Services.....	142,889	135,745
262	Underground Conductors.....	8,283	7,869
266	Meters.....	296,106	281,301
267	Meter Installations.....	25,302	24,543
	Utilization System:		
273	Municipal Street Incandescent System.....	246,318	221,686
274	Other Utilization Equipment.....	34,359	26,529
	General Property:		
275	General Office Land.....	113,625	113,625
276	Other General Land.....	27,350	27,350
278	General Office Structures.....	110,505	93,929
279	Other General Structures.....	62,378	57,595
280	General Office Equipment.....	57,724	50,673
[fols. 1093b-1123]			
281	General Store Equipment.....	3,545	3,062
282	General Shop Equipment.....	8,592	6,942
284	General Garage Equipment.....	52,551	28,903
285	General Laboratory Equipment.....	21,062	18,911
286	General Tools and Implements.....	4,297	3,667

COMMISSION EXHIBIT No. 17 (REVISED)—Continued  
Edison Light and Power Company

Summary of reproduction cost estimate as of November 30, 1936, from page 1  
of report No. 3234—Day and Zimmerman, Inc.

Acct. No.	Description	Estimated Cost of Reproduction	
		New	Less Accrued Depreciation
	Undistributed Construction Expenditures		
288	Engineering and Superintendence during Construction.....	\$206,436	\$181,093
289	General Officers' and Clerks' Salaries during Construction.....	45,875	40,243
290	General Officers' and Clerks' Expenses during Construction.....	34,406	30,182
291	Office Supplies and Expenses during Construction.....	11,469	10,061
292	Law Expenditures during Construction.....	22,937	20,121
293	Injuries and Damages during Construction.....	45,875	40,243
294	Insurance during Construction.....	22,938	20,122
295	Taxes during Construction.....	45,875	40,243
296	Interest during Construction.....	305,526	268,525
...	Discount and Expense (Cost of Financing).....	296,869	260,917
	Total Reproduction Cost—(Exclusive of Working Capital and Going Concern Value).....	<u>\$5,694,494</u>	<u>\$5,004,854</u>

(Here follow 3 photolithographs, side folios 1124-1139, 1140  
and 1141)





**SEABOARD LIGHT AND POWER COMPANY**

Summary of reproduction cost estimate as of November 30, 1935,  
from page 1 of report No. 3284 - Day and Zimmerman, Inc.,  
with deductions from Accounts 204-215, inclusive, for property  
used for Steam Production, property not used or useful, and  
property used exclusively for York Railways Company, and with  
adjustments in allowances for Indirect Costs

Account Number	Description	Estimated Cost of Reproduction New	Less Accrued Depreciation
<b>Steam Generating System</b>			
204	Land	\$ 26,961	\$ 26,961
207	Structures	89,380	86,512
208	Railroad Sidings and Trestles	160	160
209	Boiler Plant Equipment	8,297	6,925
210	Steam Engines and Turbines	30,702	16,880
211	Turbo Generators	184,972	136,734
212	Other Electric Generators	67,976	57,070
213	Other Electric Equipment	127,808	127,808
214	Coal Storage and Weighing Equipment	-	-
215	Other Power Plant Equipment	6,480	7,514
	<b>Total Steam Generating System</b>	<b>\$ 504,126</b>	<b>\$ 476,224</b>
<b>Transmission System</b>			
217	Land	\$ 11,468	\$ 11,468
219	Rights of Way	1,488	1,488
220	Transmission System Structures	22,513	22,277
221	Substation Equipment	425,888	424,432
222	Poles and Fittings	70,868	65,480
223	Overhead Conductors	162,886	98,986
224	Overhead Telephone System	861	780
225	Underground Cables	14,382	13,887
226	Underground Conductors	6,188	7,774
	<b>Total Transmission System</b>	<b>\$ 597,221</b>	<b>\$ 522,125</b>
<b>Distribution System</b>			
224	Rights of Way	\$ 848	\$ -
226	Poles and Fittings	620,889	423,808
227	Overhead Conductors	426,446	434,884
228	Overhead Transformers	377,388	244,122
229	Overhead Transformer Installations	57,382	34,236
230	Overhead Services	142,882	124,716
232	Underground Conductors	8,388	7,380
236	Motors	224,108	221,304
237	Motor Installations	26,388	24,862
	<b>Total Distribution System</b>	<b>\$ 1,425,087</b>	<b>\$ 1,115,076</b>
<b>Utilization System</b>			
273	Municipal Street Illumination System	\$ 244,218	\$ 221,886
274	Other Utilization Equipment	24,388	25,880
	<b>Total Utilization System</b>	<b>\$ 268,606</b>	<b>\$ 247,766</b>
<b>General Property</b>			
275	General Office Land	\$ 115,888	\$ 113,488
276	Other General Land	27,880	27,880
278	General Office Structures	110,806	98,888
279	Other General Structures	62,578	57,886
280	General Office Equipment	57,784	50,678
281	General Store Equipment	3,546	3,082
282	General Shop Equipment	8,802	8,942
284	General Garage Equipment	22,861	19,908
285	General Laboratory Equipment	21,082	18,811
286	General Tools and Implements	4,297	3,267
	<b>Total General Property</b>	<b>\$ 441,229</b>	<b>\$ 404,287</b>
	<b>TOTAL DIRECT COSTS</b>	<b>\$3,928,966</b>	<b>\$ 3,498,271</b>
<b>Indirect Costs</b>			
	Preliminary and Organization - 1 1/2%	\$ 58,884	\$ 58,884
	Administration, Legal and Taxes 1 1/2%	58,884	52,414
	Engineering and Supervision - 5%	196,442	174,724
	<b>Sub-Total</b>	<b>\$ 3,214,210</b>	<b>\$ 2,906,022</b>
	Interest During Construction - 6%	234,884	228,830

212	Other Electric Generators	124,972	124,972
213	Other Electric Equipment	27,870	27,870
214	Coal Storage and Weighing Equipment	227,220	227,220
215	Other Power Plant Equipment	-	-
	Total Steam Generating System	379,062	379,062
<b>Transmission System</b>			
227	Right of Way	11,400	11,400
229	Transmission System Structures	1,400	1,400
231	Substation Equipment	22,212	22,212
232	Poles and Pictures	422,222	422,222
233	Overhead Conductors	70,222	70,222
234	Overhead Telephone System	222,222	222,222
235	Underground Conductors	222	222
236	Underground Cables	12,222	12,222
	Total Transmission System	639,658	639,658
<b>Distribution System</b>			
237	Right of Way	-	-
238	Poles and Pictures	222,222	222,222
239	Overhead Conductors	222,222	222,222
240	Overhead Transformers	222,222	222,222
241	Overhead Transformer Installations	22,222	22,222
242	Overhead Services	22,222	22,222
243	Underground Conductors	22,222	22,222
244	Meters	222	222
245	Meter Installations	222,222	222,222
	Total Distribution System	639,658	639,658
<b>Utilization System</b>			
273	Municipal Street Illumination System	222,222	222,222
274	Other Utilization Equipment	22,222	22,222
	Total Utilization System	244,444	244,444
<b>General Property</b>			
275	General Office Land	112,222	112,222
276	Other General Land	27,222	27,222
277	General Office Structures	110,222	110,222
278	Other General Structures	22,222	22,222
279	General Office Equipment	22,222	22,222
280	General Store Equipment	22,222	22,222
281	General Shop Equipment	2,222	2,222
282	General Garage Equipment	2,222	2,222
283	General Laboratory Equipment	22,222	22,222
284	General Tools and Implements	22,222	22,222
	Total General Property	244,444	244,444
<b>TOTAL DIRECT COSTS</b>		<b>\$3,222,222</b>	<b>\$3,222,222</b>
<b>Indirect Costs</b>			
<u>Preliminary and Organization - 1 1/2%</u>			
	Administration, Legal and Taxes 1 1/2%	22,222	22,222
	Engineering and Supervision - 5%	122,222	122,222
	Sub-Total	144,444	144,444
<u>Interest During Construction - 6%</u>			
	Sub-Total	222,222	222,222
<u>Cost of Financing - 3%</u>			
	Sub-Total	22,222	22,222
<u>Total Direct &amp; Indirect Costs</u>			
		<b>\$3,411,111</b>	<b>\$3,411,111</b>
<b>Working Capital</b>			
	Cash	112,000	112,000
	Material and Supplies	22,000	22,000
	Total	134,000	134,000

1124-1139

**KENDON LIGHT AND POWER COMPANY**  
**STATEMENT OF ESTIMATED ORIGINAL COST OF PROPERTY**  
**AS OF JUNE 30, 1936**

Line No.	At Close of Period Ending In (a)	Not Additions During Period						Totals (j)	The Peoples Elec. Light Co. of Wash. D.C. (k)	Washington Elec. Light & Power Co. (l)	Edison Electric Light Co. (m)	Edison Electric Light Co. (n)	Edison Electric Light Co. (o)
		Edison Electric Light Co. of Wash. D.C. (b)	Washington Elec. Light & Power Co. (c)	Edison Electric Light Co. (d)	Edison Electric Light Co. (e)	Edison Electric Light Co. (f)	Edison Light & Power Co. (First) (g)						
1	1924	1,250.00		47,480.00				16,000.00	425,000.00				
2	1925	1,250.00		47,480.00				55,765.00	25,275.00				
3	1926	1,250.00		47,480.00					25,275.00				
4	1927	1,250.00		47,480.00				40,070.25	21,275.00				
5	1928	1,250.00		47,480.00				1,221.07	21,275.00				
6	1929	1,250.00		47,480.00				1,426.69	25,275.00				
7	1930	1,250.00		47,480.00				26,831.44	25,275.00				
8	1931	1,250.00		47,480.00				34,732.84	25,275.00				
9	1932	1,250.00		47,480.00				1,375.01		25,450.00	172,672.33	1,600.00	
10	1933	1,250.00		47,480.00									
11	1934	1,250.00		47,480.00				8,000.00		25,450.00	180,622.71	1,600.00	
12	1935	1,250.00		47,480.00				14,471.95		25,720.00	192,221.66	1,600.00	
13	1936	1,250.00		47,480.00				17,777.55		26,460.00	208,681.13	1,600.00	
14	1937	1,250.00		47,480.00				23,777.06		26,570.00	232,474.21	1,600.00	
15	1938	1,250.00		47,480.00				17,572.19		26,570.00	250,046.30	1,600.00	
16	1939	1,250.00		47,480.00				16,150.96		23,720.00	273,766.26	1,600.00	
17	1940	1,250.00		47,480.00				137,076.65		1,311.54	275,077.80	1,600.00	
18	1941	1,250.00		47,480.00				11,383.23		1,311.54	276,389.34	1,600.00	
19	1942	1,250.00		47,480.00				25,275.23		12,214.78	288,604.52	11,400.00	
20	1943	1,250.00		47,480.00				4,811.26		12,214.78	293,415.78	11,400.00	
21	1944	1,250.00		47,480.00				10,851.09		12,214.78	305,626.87		
22	1945	1,250.00		47,480.00									
23	1946	1,250.00		47,480.00									
24	1947	1,250.00		47,480.00									
25	1948	1,250.00		47,480.00									
26	1949	1,250.00		47,480.00									
27	1950	1,250.00		47,480.00									
28	1951	1,250.00		47,480.00									
29	1952	1,250.00		47,480.00									
30	1953	1,250.00		47,480.00									
31	1954	1,250.00		47,480.00									
32	1955	1,250.00		47,480.00									
33	1956	1,250.00		47,480.00									
34	1957	1,250.00		47,480.00									
35	1958	1,250.00		47,480.00									
36	1959	1,250.00		47,480.00									
37	1960	1,250.00		47,480.00									
38	1961	1,250.00		47,480.00									
39	1962	1,250.00		47,480.00									
40	1963	1,250.00		47,480.00									
41	1964	1,250.00		47,480.00									
42	1965	1,250.00		47,480.00									
43	1966	1,250.00		47,480.00									
44	1967	1,250.00		47,480.00									
45	1968	1,250.00		47,480.00									
46	1969	1,250.00		47,480.00									
47	1970	1,250.00		47,480.00									
48	1971	1,250.00		47,480.00									
49	1972	1,250.00		47,480.00									
50	1973	1,250.00		47,480.00									
51	1974	1,250.00		47,480.00									
52	1975	1,250.00		47,480.00									
53	1976	1,250.00		47,480.00									
54	1977	1,250.00		47,480.00									
55	1978	1,250.00		47,480.00									
56	1979	1,250.00		47,480.00									
57	1980	1,250.00		47,480.00									
58	1981	1,250.00		47,480.00									
59	1982	1,250.00		47,480.00									
60	1983	1,250.00		47,480.00									
61	1984	1,250.00		47,480.00									
62	1985	1,250.00		47,480.00									
63	1986	1,250.00		47,480.00									
64	1987	1,250.00		47,480.00									
65	1988	1,250.00		47,480.00									
66	1989	1,250.00		47,480.00									
67	1990	1,250.00		47,480.00									
68	1991	1,250.00		47,480.00									
69	1992	1,250.00		47,480.00									
70	1993	1,250.00		47,480.00									
71	1994	1,250.00		47,480.00									
72	1995	1,250.00		47,480.00									
73	1996	1,250.00		47,480.00									
74	1997	1,250.00		47,480.00									
75	1998	1,250.00		47,480.00									
76	1999	1,250.00		47,480.00									
77	2000	1,250.00		47,480.00									
78	2001	1,250.00		47,480.00									
79	2002	1,250.00		47,480.00									
80	2003	1,250.00		47,480.00									
81	2004	1,250.00		47,480.00									
82	2005	1,250.00		47,480.00									
83	2006	1,250.00		47,480.00									
84	2007	1,250.00		47,480.00									
85	2008	1,250.00		47,480.00									
86	2009	1,250.00		47,480.00									
87	2010	1,250.00		47,480.00									
88	2011	1,250.00		47,480.00									
89	2012	1,250.00		47,480.00									
90	2013	1,250.00		47,480.00									
91	2014	1,250.00		47,480.00									
92	2015	1,250.00		47,480.00									
93	2016	1,250.00		47,480.00									
94	2017	1,250.00		47,480.00									
95	2018	1,250.00		47,480.00									
96	2019	1,250.00		47,480.00									
97	2020	1,250.00		47,480.00									
98	2021	1,250.00		47,480.00									
99	2022	1,250.00		47,480.00									
100	2023	1,250.00		47,480.00									
101	2024	1,250.00		47,480.00									
102	2025	1,250.00		47,480.00									
103	2026	1,250.00		47,480.00									
104	2027	1,250.00		47,480.00									
105	2028	1,250.00		47,480.00									
106	2029	1,250.00		47,480.00									
107	2030	1,250.00		47,480.00									
108	2031	1,250.00		47,480.00									
109	2032	1,250.00		47,480.00									
110	2033	1,250.00		47,480.00									
111	2034	1,250.00		47,480.00									
112	2035	1,250.00		47,480.00									
113	2036	1,250.00		47,480.00									
114	2037	1,250.00		47,480.00									
115	2038	1,250.00		47,480.00									
116	2039	1,250.00		47,480.00									
117	2040	1,250.00		47,480.00									
118	2041	1,250.00		47,480.00									
119	2042	1,250.00		47,480.00									
120	2043	1,250.00		47,480.00									
121	2044	1,250.00		47,480.00									
122	2045	1,250.00		47,480.00									
123	2046	1,250.00		47,480.00									
124	2047	1,250.00		47,480.00									
125	2048	1,250.00		47,480.00									
126	2049	1,250.00		47,480.00									



EXHIBIT NO. 21  
PAGE NO. 1

Not Additional During Period					Accumulated Totals to Close of Period								
Edison Light & Power Co. (a)	Edison Light & Power Co. (b)	Edison Light & Power Co. (c)	Edison Light & Power Co. (d)	Edison Light & Power Co. (e)	Totals (f)	Edison Light & Power Co. (g)	Edison Light & Power Co. (h)	Edison Light & Power Co. (i)	Edison Light & Power Co. (j)	Edison Light & Power Co. (k)	Edison Light & Power Co. (l)	Edison Light & Power Co. (m)	Totals (n)
					18 000.00	18 000.00							18 000.00
					55 765.09	55 765.09							55 765.09
					40 070.25	40 070.25							40 070.25
					1 821.71	1 821.71							1 821.71
500.00					1 486.69	1 486.69							1 486.69
50.00					25 811.84	25 811.84							25 811.84
					34 132.84	34 132.84							34 132.84
					8 174.01	8 174.01							8 174.01
					8 000.00	8 000.00							8 000.00
					14 471.35	14 471.35							14 471.35
					17 777.05	17 777.05							17 777.05
					23 777.06	23 777.06							23 777.06
					17 572.19	17 572.19							17 572.19
					16 150.36	16 150.36							16 150.36
					137 076.65	137 076.65							137 076.65
					79 466.97	79 466.97							79 466.97
					47 466.94	47 466.94							47 466.94
					66 660.97	66 660.97							66 660.97
					40 211.21	40 211.21							40 211.21
					12 214.71	12 214.71							12 214.71
					29 841.12	29 841.12							29 841.12
					5 671.33	5 671.33							5 671.33
					21 300.93	21 300.93							21 300.93
					6 351.92	6 351.92							6 351.92
					4 271.10	4 271.10							4 271.10
					4 265.81	4 265.81							4 265.81
					1 851.08	1 851.08							1 851.08
					16 242.94	16 242.94							16 242.94
					919 869.65	919 869.65							919 869.65
					185 867.39	185 867.39							185 867.39
					32 241.4	32 241.4							32 241.4
					1 114 881.24	1 114 881.24							1 114 881.24
					214 855.5	214 855.5							214 855.5
					10 042.05	10 042.05							10 042.05
					41 461.90	41 461.90							41 461.90
					59 269.99	59 269.99							59 269.99
					42 008.10	42 008.10							42 008.10
					25 198.71	25 198.71							25 198.71
					42 411.44	42 411.44							42 411.44
					109 942.85	109 942.85							109 942.85
					47 734.61	47 734.61							47 734.61
					5 181.32	5 181.32							5 181.32
					227 745.51	227 745.51							227 745.51
					114 918.25	114 918.25							114 918.25
					136 146.44	136 146.44							136 146.44
					172 165.05	172 165.05							172 165.05
					206 501.65	206 501.65							206 501.65
					202 297.07	202 297.07							202 297.07
					312 307.47	312 307.47							312 307.47
					946 130.77	946 130.77							946 130.77
					382 079.14	382 079.14							382 079.14
					165 821.59	165 821.59							165 821.59
					121 072.60	121 072.60							121 072.60
					179 953.93	179 953.93							179 953.93
					218 413.93	218 413.93							218 413.93
					67 175.81	67 175.81							67 175.81
					14 281 945.52	14 281 945.52							14 281 945.52
1916 for properties and franchises					701.46								701.46
					84382 647.08								84382 647.08
													701.46
													84382 647.08

# EDISON LIGHT AND POWER COMPANY

EXHIBIT NO. 23

Sheet No. 2

## RECONCILIATION OF UNDEPRECIATED BOOK VALUE OF FIXED CAPITAL WITH ESTIMATED ORIGINAL COST AS OF JUNE 30, 1936

Undepreciated Book Value of Fixed Capital as of  
June 30, 1936, exclusive of Construction Work  
in Progress

\$4,760,481.81

### Deductions:

#### Edison Electric Light Co.:

Amount charged to "Construction" and credited to  
"Dividends" on December 31, 1889 \$ 2,448.24

Excess of purchase price over former book value  
of property acquired from Peoples Electric  
Light Company of York, on April 11, 1894 3,920.85

Amount charged to "Construction" and credited to  
"Edison Electric Light Company Stock", on  
May 31, 1894 9,562.04

Property of Edison Electric Light Co., recorded  
on books of York Light Heat & Power Company on  
July 1, 1899 in excess of the amounts shown by  
the Edison Company's books 80,827.77

Write-up of book value of property on December  
1, 1907; credited to Profit and Loss 1,715,087.02

#### Edison Light and Power Co. (Second):

Excess of amount booked for property of  
Merchants Electric Light Heat and Power Company  
at merger on July 1, 1915 over former book value 173,000.00

Total Deductions 1,984,825.92  
2,775,655.99

### Additions:

#### Edison Electric Light Co.:

Restore amounts credited to "Construction" for  
depreciation amounting to \$19,418.43, in 1896  
and \$24,962.05 in 1898 \$ 44,380.48

Differences between balances in "Construction"  
account before and after opening new books on  
January 1, 1902 and January 1, 1904 amounting  
to \$3,446.43 and \$63,369.30, respectively 66,815.73

Excess of estimated original cost of property  
of Westinghouse Electric Light Heat & Power  
Co., over purchase price, on October 31, 1908 5,869.78

#### Edison Light and Power Co. (First):

Write-down of property account in merger of  
June 1, 1913 1,379,970.19

#### Merchants Electric Light Heat & Power Co.:

Organization Expense erroneously charged to  
Profit and Loss on December 31, 1907 285.86

#### Edison Light and Power Co. (Second):

Writedown of book value on November 30, 1915,  
of property acquired in merger of July 1, 1915, 2,012.42

"Dividends" on December 31, 1899	\$ 2,448.24	
Excess of purchase price over former book value of property acquired from Peoples Electric Light Company of York, on April 11, 1894	3,920.85	
Amount charged to "Construction" and credited to "Edison Electric Light Company Stock", on May 31, 1894	9,562.04	
Property of Edison Electric Light Co., recorded on books of York Light Heat & Power Company on July 1, 1899 in excess of the amounts shown by the Edison Company's books	80,827.77	
Write-up of book value of property on December 1, 1907, credited to Profit and Loss	1,715,067.02	
Edison Light and Power Co. (Second):		
Excess of amount booked for property of Merchants Electric Light Heat and Power Company at merger on July 1, 1915 over former book value	173,000.00	
Total Deductions		<u>1,984,825.92</u> 2,775,655.59

**Additions:**

Edison Electric Light Co.:		
Restore amounts credited to "Construction" for depreciation amounting to \$19,418.43, in 1896 and \$24,962.05 in 1898	\$ 44,380.48	
Differences between balances in "Construction" account before and after opening new books on January 1, 1902 and January 1, 1904 amounting to \$3,445.43 and \$63,369.30, respectively	66,815.73	
Excess of estimated original cost of property of Westinghouse Electric Light Heat & Power Co., over purchase price, on October 31, 1908	5,869.78	
Edison Light and Power Co. (First):		
Write-down of property account in merger of June 1, 1913	2,379,970.19	
Merchants Electric Light Heat & Power Co.:		
Organization Expense erroneously charged to Profit and Loss on December 31, 1907	285.86	
Edison Light and Power Co. (Second):		
Writedown of book value on November 30, 1915, of property acquired in merger of July 1, 1915, from Merchants Electric Light Heat & Power Co.	68,814.44	
Difference between book and appraised value of property sold to York Steam Heating Company on December 31, 1921, retroactive to June 1, 1913	40,855.01	
Total Additions		<u>1,606,991.49</u>

Estimated Original Cost - As of June 30, 1935 exclusive of Construction Work in Progress	<u>\$ 392,647.08</u>
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[fol. 1142]

## COMMISSION'S EXHIBIT 24—SHEET 1

## Edison Light and Power Company

Earnings and Dividend Record of the Peoples Electric Light Company for the Period from May 4, 1886 to October 31, 1893

Line No.	Year Ended First Monday in November (a)	Average Undepreciated Original Cost (b)	6% Return on Undepreciated Original Cost (c)	Income Available for Return (d)	Income in Excess of or Deficient of 6% Return (e)	Dividends Paid	
						Rate (f)	Amount (g)
1	1886(a)	\$18,000	\$1,080		(Figures Not Available)		
2	1887	22,138	1,328				
3	1888	26,275	1,577				
4	1889	38,775	2,327	\$2,117	\$210		
5	1890	52,655	3,159	4,271	1,112	6%	\$3,000
6	1891	55,117	3,307	7,584	4,277	10%	5,000
7	1892	56,678	3,401	4,972	1,571	7%	3,500
8	1893	60,770	3,646	6,625	2,979	6%	3,000
9	1894 Property Sold to Edison Electric Light Company.						

(a) For period from May 4, 1886 to first Monday in November, 1886.

[fol. 1143]

## COMMISSION'S EXHIBIT 24—SHEET 2

## Edison Light &amp; Power Company

Earnings and Dividend Record of Westinghouse Electric Light, Heat &amp; Power Company for the Period from October 14, 1892 to October 31, 1902

Line No.	Year Ended First Monday in November (a)	Average Undepreciated Original Cost (b)	6% Return on Undepreciated Original Cost (c)	Income Available for Return (d)	Income in Excess of or Deficient of 6% Return (e)	Dividends Paid	
						Rate (f)	Amount (g)
1	1893(a)	\$24,465	\$1,468	\$3,055	\$4,503		
2	1894	24,948	1,497	3,871	2,368		
3	1895	25,430	1,526	3,320	1,794	3%	\$753
4	1896	25,525	1,532	2,581	1,049	3%	772
5	1897	26,090	1,565	3,542	1,977	7%	1,852
6	1898	26,516	1,591	4,726	3,135	12%	3,176
7	1899	26,571	1,594	3,812	2,218	8%	2,017
8	1900	28,185	1,691	2,293	602	4%	1,059
9	1901	30,583	1,835	4,718	2,883		
10	1902	31,850	1,911	1,099	3,010		

(a) For period from October 14, 1892 to first Monday in November, 1893.

[fol. 1144]

## COMMISSION'S EXHIBIT 24—SHEET 3

## Edison Light &amp; Power Company.

Earnings and Dividend Record of Edison Electric Light Company for the Period from April 13, 1885 to November 30, 1897

Line No.	Year Ended Nov. 30 (a)	Average Undepreciated Original Cost (b)	6% Return on Undepreciated Original Cost (c)	Income Available for Return (d)	Income in Excess of or Deficient of 6% Return (e)	Dividends Paid	
						Rate (f)	Amount (g)
1	1887(a)	\$47,490	\$7,242	\$5,246	\$1,996	3%	\$830.10
2	1889(b)	55,025	7,153	197	6,956		
3	1890(c)	63,190	3,475	3,867	392		
4	1891	65,788	3,947	6,227	2,280		
5	1892	79,865	4,792	7,849	3,057	3%	1,783.80
6	1893	97,276	5,837	9,497	3,660		
7	1894	137,675	8,261	6,256(d)	2,005	3%	4,402.50
8	1895	176,678	10,601	24,170	13,569	5%	7,337.50
9	1896	186,452	11,187	26,251	15,064	8%	11,740.00
10	1897	200,515	12,030	27,311	15,281	8%	12,737.60

(a) For period from incorporation on April 13, 1885 to November 1, 1887.

(b) For 26 months ended December 31, 1889.

(c) For 11 months ended November 30, 1890.

(d) Does not include six months' income of The Peoples Electric Light Company, the property of which was purchased on April 11, 1894. The minutes of the Board of Directors of the Edison Electric Light Company, held on April 16, 1894, show the operating income of the Peoples Company for an unstated period to have been \$7,680.38. The revenues on this statement were \$13,729.12, as compared with \$23,694.02 for the 12 months ended October 31, 1893.

[fol. 1145]

## COMMISSION'S EXHIBIT 24—SHEET 4

## Edison Light &amp; Power Company

Earnings and Dividend Record of Red Lion Electric Light Company for the Period from May 19, 1890 to October 31, 1900

Line No.	Year Ended First Monday in November (a)	Average Undepreciated Original Cost (b)	6% Return on Undepreciated Original Cost (c)	Income Available for Return (d)	Income in Excess of or Deficient of 6% Return (e)	Dividends Paid	
						Rate (f)	Amount (g)
1	1891(a)	\$950	\$57				
2	1892	978	59				
3	1893	1,005	60				
4	1894	1,005	60				
5	1895	1,005	60				
6	1896	2,328	140				
7	1897	3,875	233	\$387	\$154		
8	1898	4,100	246	588	342	5%	\$205
9	1899	4,100	246	651	405	5%	205
10	1900	4,100	246	616	370	5%	205

Figures  
Not  
Available

(a) For period from May 19, 1890 to first Monday in November, 1891.

pls. 1146-1147]

## COMMISSION'S EXHIBIT 24—SHEET 5

## Edison Light and Power Company

Earnings and Dividend Record of Merchants Electric Light, Heat & Power Company for the Period from December 14, 1900 to December 31, 1910

Line No.	Year Ended Dec. 31 (a)	Average Undepreciated Original Cost (b)	6% Return on Undepreciated Original Cost (c)	Income Available for Return (d)	Income in Excess of or Deficient of 6% Return (e)	Dividends Paid (f)
1	1901(a)	\$41,321	\$1,292		\$1,292	
2	1902	57,012	3,421	\$1,727(b)	1,694	
3	1903	85,368	5,122	1,605	3,517	
4	1904	102,937	6,176	10,640	4,464	
5	1905	113,269	6,796	12,835	6,039	
6	1906	125,158	7,509	6,534	975	None
7	1907	146,540	8,792	15,398	6,606	
8	1908	164,297	9,857	9,576	281	
9	1909	177,783	10,667	15,114	4,447	
10	1910	191,610	11,497	24,027	12,530	

(a) From date of incorporation, Dec. 14, 1900 to Dec. 31, 1901. Actual construction appears to have been begun on or about July 1, 1901.

(b) Includes expenses for year 1901, amounting to \$839.46.

## EDISON LIGHT AND POWER COMPANY

**DETAILS OF COMPUTATION OF ESTIMATED ORIGINAL COST OF PROPERTY  
OF THE PEOPLES ELECTRIC LIGHT COMPANY FOR THE PERIOD  
FROM MAY 4, 1896 TO APRIL 11, 1894**

Line No.	Year Ended the First Monday in November	Description and Source of Information	Net Additions During Year	Balance at End of Year
			Amount Col. (b), Exh. 23 (a)	Column (k), Exhibit 23 (c)
1	1896 (a)	Estimated Value of Property as Given in Application for Letters Patent Granted on May 4, 1896	\$18,000.00	\$18,000.00
2	1897	Increase in Paid-In Capital Stock from \$18,725 to \$25,000, as Reported in Capital Stock Tax Return	8,275.00	26,275.00
3	1898	None		26,275.00
4	1899	Increase in Paid-In Capital Stock from \$25,000 to \$50,000, as Reported in Capital Stock Tax Return	25,000.00	51,275.00
5	1900	One-third of \$7,622.98, representing Net Difference Between \$51,275 shown on line 4 above, and Value of Property (\$52,562.48) as reflected by Balance Sheet in Minutes of Edison Electric Light Company on April 16, 1894, less amount of Betterments (\$3,624.56) during year 1893, shown on Capital Stock Tax Return	2,560.98	53,835.98
6	1901	Same as line 5 above	2,560.97	56,396.95
7	1902	Same as line 5 above	2,560.97	58,957.92
8	1903	Amount of "Betterments" shown on Capital Stock Tax Return	3,624.56	62,582.48
9	1904	Total Machinery and Construction set forth on Balance Sheet of Peoples Company as taken from Minutes of 4-16-94 of Edison Electric Light Company (b)		<u>\$62,582.48</u>

(a) As of May 4, 1896.

(b) Balance Sheet of Peoples Electric Light Company as of April 11, 1894, as reflected by Minutes of Edison Electric Light Company:

Assets

Machinery	\$61,830.00
Construction	<u>10,752.48</u>
Total	<u>\$72,582.48</u>

Liabilities

Capital Stock	\$50,000.00
Undivided Profits	<u>12,582.48</u>
Total	<u>\$62,582.48</u>

## EDISON LIGHT AND POWER COMPANY

DETAILS OF COMPUTATION OF ESTIMATED ORIGINAL COST OF PROPERTY  
OF WESTINGHOUSE ELECTRIC LIGHT, HEAT & POWER COMPANY FOR THE  
PERIOD FROM OCTOBER 14, 1892 TO OCTOBER 31, 1908

Line No.	Year Ended the First Monday in November (a)	Description and Source of Information (b)	Amount	Balance at
			Col. (c), Exh. 23 (c)	End of Year Column (1) Exhibit 23 (d)
1	1892 (a)	Paid-In Capital Stock as reported in Capital Stock Tax Return	\$24,465.00	\$24,465.00
2	1894	Increase in Paid-In Capital Stock as reported in Capital Stock Tax Return	985.00	25,450.00
3	1895	None		25,450.00
4	1896	Increase in Paid-In Capital Stock as reported in Capital Stock Tax Return	290.00	25,740.00
5	1897	Increase in Paid-In Capital Stock as reported in Capital Stock Tax Return	740.00	26,480.00
6	1898	Amount of "Retirements" listed under Expenditures in Capital Stock Tax Return	110.98	26,570.98
7	1899	None		26,570.98
8	1900 (b)	Net Additions as reflected on books of York Light, Heat & Power Co.	3,227.33	29,798.31
9	1901 (c)	Net Additions as reflected on books of York Light, Heat & Power Co.	2,533.53	32,331.84
10	1902	None		32,331.84
11	1903 (d)	Credits to Plant Account per books of Westinghouse Company	117.66	32,214.78
12	1904-1908	None		<u>32,214.78</u>
13		Total shown on Line 25, Column (c), Exhibit 23	<u>32,214.78 (e)</u>	

(a) For period from October 14, 1892 to First Monday in November, 1893.

(b) For period from First Monday in November, 1893 to June 30, 1900.

(c) For period from July 1, 1900 to December 31, 1901.

(d) For year ended December 31, 1903.

(e) The Edison Company recorded the purchase of the Westinghouse property at a cost of \$25,345, or \$5,966.78 less than the original cost herein estimated at \$32,214.78.

## WINDSOR LIGHT AND POWER COMPANY

DETAILS OF COMPUTATION OF ESTIMATED ORIGINAL COST OF PROPERTY  
OF RED LION ELECTRIC LIGHT COMPANY FOR THE PERIOD  
FROM MAY 19, 1890 TO APRIL 1, 1905

Line No.	Year Ended the First Monday in November (a)	Description and Source of Information (b)	Amount	Balance at
			Col. (c), Exh. 23 (c)	End of Year Column (n), Exhibit 23 (d)
1	1891 (a)	Amount of Paid-In Capital Stock shown on Capital Stock Tax Return	\$ 950.00	\$ 950.00
2	1892	Increase in Paid-In Capital Stock shown on Capital Stock Tax Return	55.00	1,005.00
3	1893-1896	None		1,005.00
4	1896	Difference Between Paid-In Capital Shown on Line 3, and Amount of \$3,650 Reflected in Capital Stock Tax Return as "Real Estate and Buildings"	2,645.00	3,650.00
5	1897	Excess of Paid-In Capital Stock at Close of Year over Value Shown on Line 4 - From Capital Stock Tax Return	450.00	4,100.00
6	1898-1901	None		4,100.00
7	1902	Increase in Paid-In Capital Stock Shown on Capital Stock Tax Return	7,350.00	11,450.00
8	1903-1904	None		11,450.00
9	1905	Red Lion Electric Light Co., together with three non-operating companies was merged into a new corporation entitled York & Windsor Electric Light Company. In the agreement of merger and consolidation dated April 1, 1905, the paid-in capital stock of the Red Lion Company was shown as \$11,850, or \$400 more than the amount shown by the 1904 Capital Stock Tax Report	400.00	\$11,850.00
Total Shown on Line 22, Column (c), Exhibit 23			\$11,850.00	

(a) For Period from May 19, 1890 to First Monday in November, 1891.



## YORK &amp; WINDESS LIGHT AND POWER COMPANY

**DETAILS OF COMPOSITION OF ESTIMATED ORIGINAL COST OF PROPERTY  
OF YORK & WINDESS ELECTRIC LIGHT COMPANY FOR THE PERIOD  
FROM APRIL 1, 1906 TO MAY 31, 1913.**

Line No.	Year Ended the First Monday in November (a)	Description and Source of Information (b)	Amount	Balance at
			Col. (f), Exh. 23 (e)	End of Year Column (c), Exhibit 23 (d)
1	1906	Company formed by merger of Red Lion Electric Light Company and three non-operating companies. Assuming that non-operating companies had no physical property, the initial original cost of property of the York & Windess Company is estimated at the final estimate of original cost set up for the Red Lion Company	\$11,680.00	\$11,680.00
2	1906	Amount of bonds appearing to have been issued during year. The books of this company reflect an entry dated May 31, 1913, by which bondholders owing \$600 principal amount of bonds were credited with the principal of \$600, premium of \$45, and accrued interest for \$315, or a total of \$1,350. The \$315 for interest appears to cover the seven years from 1906 to 1913. Thus, it was concluded that the \$60,000 of bonds were issued in 1906	60,000.00	71,680.00
3	1907-1910	None		71,680.00
4	1911	Amount of Deductions reflected by Capital Stock Tax Return	1,801.76	73,151.76
5	1912	Difference between amount of \$73,151.76 shown on Line 4 above, and amount of \$79,475.00 reflected on books opened by York & Windess Company on October 1, 1912	6,323.24	79,475.00
6	1913	Net additions reflected on books of company	<u>440.51</u>	<u>\$79,915.51</u>
7		Total shown on Line 31, Column (f), Exhibit 23	<u>\$79,915.51</u>	

EXHIBIT NO. 27Sheet No. 1

## MILSON LIGHT AND POWER COMPANY

STATEMENT OF INCOME AVAILABLE FOR RETURN, OF THE PEOPLES ELECTRIC LIGHT COMPANY  
AS REFLECTED IN CAPITAL STOCK TAX RETURNS AND AS ADJUSTED,  
FOR THE FISCAL YEARS ENDED THE FIRST MONDAY IN NOVEMBER,  
FROM 1886 TO 1893, INCLUSIVE

Line No.		1886 (a)	1890 (b)	1891 (c)	1892 (d)	1893 (e)
	<b>For Capital Stock Tax Returns:</b>					
1	Gross Earnings	\$16 402.29	\$14 256.91	\$20 396.50	\$15 334.61	\$23 664.02
2	Expenditures Operations	6 371.37(a)	9 985.86(a)	12 814.71(a)	10 362.75(a)	17 069.40
3	Settlements					3 624.56
4	Totals	6 371.37	9 985.86	12 814.71	10 362.75	20 694.02
5	Net Earnings	8 116.92	4 271.05	7 581.79	4 971.86	3 000.00
6	Adjustments: To eliminate amount of "Settlements" considered as Plant Additions					3 624.56
7	Income Available for Return, as Shown on Exhibit 24, Sheet 1, Column (d)	8 116.92	4 271.05	7 581.79	4 971.86	6 624.56

Note--Capital Stock Tax returns were filed for the years 1886, 1887 and 1888,  
but no details were given therein regarding earnings.

(a) The Capital Stock Tax Returns reflect only the Gross and Net Earnings in  
these four periods, the amounts shown for "Operations" therein, repre-  
senting the differences between the Gross and Net Earnings.

## EDISON LIGHT AND POWER COMPANY

STATEMENT OF INCOME AVAILABLE FOR RETURN, OF WESTINGHOUSE ELECTRIC LIGHT, HEAT & POWER COMPANY  
AS REFLECTED IN CAPITAL STOCK TAX RETURNS AND AS ADJUSTED, FOR THE FISCAL YEARS ENDED  
THE FIRST MONTH IN NOVEMBER FROM 1893 TO 1902, INCLUSIVE

Line No.		1893 (a)	1894 (b)	1895 (c)	1896 (d)	1897 (e)	1898 (f)	1899 (g)	1900 (h)	1901 (i)	1902 (j)
	<u>For Capital Stock Tax Returns:</u>										
	<u>Gross Earnings:</u>										
1	From Operations	\$3 241.04	\$10 183.55	\$11 949.44	\$11 758.03	\$14 153.88	\$15 088.14	\$15 266.80	\$12 741.30	\$8 934.15	\$3 374.65
2	Rentals							32.00			47.25
3	Interest						74.99	105.97			
4	Other Sources								21.50		
5	Totals	3 241.04	10 183.55	11 949.44	11 758.03	14 153.88	15 163.13	15 404.77	12 762.80	8 934.15	3 421.90
	<u>Expenditures:</u>										
6	Operation	6 276.16	11 054.19	6 625.35	7 976.99	9 171.54	8 553.46	8 970.53	7 748.84	2 519.72	3 341.78
7	Maintenance of Equipment						1 108.25	1 316.44	2 088.96		65.14
8	Maintenance of Way							238.67	101.00	59.19	
9	Taxes				480.00	720.00	700.00	581.05			429.47
10	Expenses of Management				720.00	720.00		370.71		1 637.66	664.61
11	Betterments						110.98	2 031.18		2 965.59	
12	Interest	94.10	123.09								
13	Totals	6 370.26	11 177.28	8 629.35	9 176.99	10 611.54	10 472.69	13 518.48	10 448.80	7 180.16	4 521.00
14	Net Earnings	3 129.22	993.73	3 320.11	2 581.04	3 542.34	4 690.44	1 866.29	2 314.00	1 753.97	1 099.10
	<u>Adjustments:</u>										
15	Elimination of "Betterments" Considered as Plant Additions						110.98	2 031.18		2 965.59	
16	Elimination of Earnings From "Other Sources"								21.50		
17	Elimination of Interest Received						74.99	105.97			
18	Elimination of Interest Paid	94.10	123.09								
19	Net Adjustments	94.10	123.09				35.99	1 925.21	21.50	2 965.59	
20	Income available for return as shown on Exhibit 24, Sheet 2, Column (d)	\$3 035.12	\$ 870.64	\$ 3 320.11	\$ 2 581.04	\$ 3 542.34	\$ 4 726.43	\$ 3 211.50	\$ 2 292.50	\$4 717.56	\$1 099.10

(a) Not shown on return--Total Gross Earnings of \$11,949.44 only amount shown.

(b) Not shown on return--Represents difference between gross and net earnings.

(c) Return shows net earnings of \$4,084.57, but details on return result in net earnings of only \$1,753.97.

## EDISON LIGHT AND POWER COMPANY

**STATEMENT OF INCOME AVAILABLE FOR RETURN OF EDISON ELECTRIC LIGHT COMPANY  
AS REFLECTED ON THE COMPANY'S BOOKS AND AS ADJUSTED,  
FOR THE PERIOD FROM APRIL 15, 1886 TO NOVEMBER 30, 1897**

Line No.		Apr. 15, 1886 to Nov. 1, 1887 (a)	Nov. 1, 1887 to Dec. 31, 1889 (b)	Jan. 1, 1890 to Nov. 30, 1890 (c)	Year Ended November			
					1891 (d)	1892 (e)	1893 (f)	1894 (g)
1	<u>Per Books:</u> Earnings	\$26 712.71	\$29 053.26	\$21 849.06	\$30 178.10	\$32 380.22	\$37 054.94	\$37 086.79
2	<u>Expenses:</u> Expenses	24 297.09	28 346.25	5 112.10	9 081.30	6 045.58	5 331.03	7 275.73
3	Discount, Interest, Taxes and Insurance		5 060.87					
4	Labor			4 977.41	5 573.08	5 881.11	6 086.82	9 630.69
5	Insurance and Taxes			235.82	782.51	1 129.06	1 413.29	1 503.71
6	Interest			1 740.54	2 332.32	1 867.09	2 010.55	1 566.67
7	Freight			4 440.30	4 225.26	3 657.95	4 109.38	5 644.21
8	Coal			2 233.40	1 539.51	3 348.98	3 210.81	2 988.70
9	Lamps			982.85	2 750.06	2 215.12	2 245.25	1 459.13
10	Repairs					1 156.75	1 325.10	1 472.60
11	Dynamos and Motors					476.46	1 345.36	87.96
12	Fixtures					225.36	238.08	562.93
13	Fans					595.93	254.41	241.05
14	Total Expenses	24 297.09	43 397.12	19 722.42	26 283.90	26 505.37	29 546.08	32 297.23
15	Net Earnings	4 415.62	4 343.86	2 126.64	3 894.20	5 881.85	7 498.86	4 689.56
16	<u>Adjustments:</u> 3% Dividend paid on \$27,070 of Capital Stock on 7/1/86, as disclosed by Capital Stock Tax Return, and assumed to be included in "Expenses", Line 2, as it does not appear elsewhere in the accounts		830.10					
17	Elimination of estimated amount of Discount and Interest included in the amount of \$5,060.87, shown on Line 3. The amount remaining, namely, \$509.60 was intended to represent the probable tax and insurance expense, as calculated for 26 months ended Dec. 31, 1889, from the actual expense of \$235.82, during the eleven months ended November 30, 1890, as shown by Line 5 above. Such a calculation (26/11 X \$235.82) would amount to \$507.39. Due to an arithmetical error, the amount came to \$509.60. Thus, the income available for return, as shown by Line 19, should be reduced to \$150.96							
	Elimination of Interest Expense			1 740.54	2 332.32	1 867.09	2 010.55	1 566.67
	Adjusted Income Available for Return as shown on Exhibit 24, Sheet 3, Column (d)	\$ 5 245.72	\$ 197.41	\$ 3 667.18	\$ 6 226.52	\$ 7 648.94	\$ 9 497.41	\$ 6 256.23



# EDISON LIGHT AND POWER COMPANY

## STATEMENT OF INCOME AVAILABLE FOR RETURN OF EDISON ELECTRIC LIGHT COMPANY AS REFLECTED ON THE COMPANY'S BOOKS AND AS ADJUSTED, FOR THE PERIOD FROM APRIL 13, 1885 TO NOVEMBER 30, 1897

	Apr. 13, 1885 to Nov. 1, 1887 (a)	Nov. 1, 1887 to Dec. 31, 1889 (b)	Jan. 1, 1890 to Nov. 30, 1890 (c)	Year Ended November 30,						
				1891 (d)	1892 (e)	1893 (f)	1894 (g)	1895 (h)	1896 (i)	1897 (j)
	\$36 712.71	\$39 053.26	\$21 849.06	\$30 178.10	\$32 880.22	\$37 054.94	\$37 084.79	\$54 825.07	\$69 414.48	\$66 219.41
and Insurance	24 297.09	38 346.25 5 080.87	5 112.10	9 081.80	8 045.56	5 331.03	7 278.72	6 576.43	11 874.77	16 974.95
			4 977.41	5 873.05	5 841.11	8 086.82	9 630.88	9 537.22	5 734.15	
			235.82	782.51	1 129.06	1 413.29	1 503.71	2 249.48	3 691.88	2 984.36
			1 740.54	2 332.32	1 867.09	2 010.55	1 566.67	2 849.14	1 925.95	1 916.66
			4 440.30	4 225.26	3 687.95	4 109.38	5 644.21	6 224.24	6 384.99	5 091.91
			2 233.40	1 539.51	3 346.98	3 210.81	2 988.70	2 342.50	2 544.23	2 717.84
			982.85	2 780.05	2 215.12	2 265.26	1 459.15	1 368.99	1 274.49	1 846.68
					1 159.73	1 323.10	1 472.60	1 006.51	1 168.38	2 025.62
					476.46	1 345.36	88.95	184.36	112.80	
					225.58	236.08	552.95	660.30	12.41	10.25
					593.93	254.41	241.05	22.75	249.22	
	24 297.09	43 397.12	19 722.42	26 283.90	26 898.37	29 546.08	32 397.25	35 893.81	35 089.27	33 525.01
	4 416.62	4 343.86	2 126.84	3 694.20	5 981.85	7 486.86	4 689.54	21 321.26	24 325.21	25 394.49
f Capital Stock on 7/1/85, k Tax Return, and assumed Line 2, as it does not units	630.10									
st of Discount and nt of \$5,060.87, shown on s, namely, \$509.60 was butable tax and insurance 5 months ended Dec. 31, of \$235.82, during the 30, 1890, as shown by tion (26/11 X \$235.82). to an arithmetical error. Thus, the income avail- Line 19, should be		4 541.27								
			1 740.54	2 332.32	1 867.09	2 010.55	1 566.67	2 849.14	1 925.95	1 916.66
le for Return as shown on column (d)	\$ 5 245.72	\$ 197.41	\$ 3 667.18	\$ 6 226.52	\$ 7 848.94	\$ 9 497.41	\$ 6 256.21	\$24 170.40	\$26 251.16	\$27 311.06

EXHIBIT NO. \_\_\_\_\_

Sheet No. 4

## NELSON LIGHT AND POWER COMPANY

STATEMENT OF INCOME AVAILABLE FOR RETURN OF NED LION ELECTRIC LIGHT COMPANY  
AS REFLECTED IN CAPITAL STOCK TAX RETURNS AND AS ADJUSTED,  
FOR THE FISCAL YEARS ENDING THE FIRST MONDAY IN NOVEMBER,  
FROM 1897 TO 1900, INCLUSIVE

Line No.		1897 (a)	1898 (b)	1899 (c)	1900 (d)
	<b>For Capital Stock Tax Returns:</b>				
1	Gross Dividends	\$1 337.05	\$1 460.00	\$1 580.00	\$1 522.55
	<b>Expenditures:</b>				
2	Operation	940.00	852.00	929.00	907.00
3	Dividends (b)		205.00	205.00	205.00
4	Totals	940.00	1 057.00 (c)	1 134.00	1 112.00
5	Net Earnings	397.05	368.00	446.00	410.55
	<b>Adjustments:</b>				
6	Elimination of Dividends		205.00	205.00	205.00
7	Income available for return as shown on Exhibit 24, Sheet 4, Column (d)	\$ 397.05	\$ 568.00	\$ 651.00	\$ 615.55

Note-No details given on Tax Returns For Years from 1891 to 1896, Inclusive

(a) Details add to \$1,007.

(b) Designated as "Interest on Debt" on Income Statements of Tax Reports, but as "Dividends" in space provided for reporting dividends. Amounts of \$205 were equal to 5% on \$4,100 of Issued Capital Stock.



**STORM LIGHT AND POWER COMPANY**

STATEMENT OF INCOME AVAILABLE FOR RETURN OF MERCHANTS ELECTRIC LIGHT, HEAT & POWER COMPANY  
AS REFLECTED ON THE COMPANY'S BOOKS AND AS ADJUSTED FOR THE PERIOD  
FROM DECEMBER 14, 1940 TO DECEMBER 31, 1940

[illegible]



**STATEMENT SHOWING DISCOUNT, BROKERAGE OR UNDERWRITING COMMISSION, AND MECHANICAL EXPENSE, ON ALL SECURITY ISSUES APPROVED BY COMMISSION TO NOVEMBER 15, 1936, WHICH WERE PROPOSED TO BE DISTRIBUTED ULTIMATELY TO THE GENERAL PUBLIC**

No.	Name of Company	Type	Type of Security	Amount Sold	Commission (%)		Discount (%)
					Brokerage	Underwriting	
7	Lehigh Water Company	Water	1st Mtg. 6's	100,000	0	0	0
14	The United Telephone Company of Pa.	Tel.	1st Mtg. S.P. 5's	280,800	3.5	0	1.5
25	Quakertown Water Company	Water	1st Ref. Mtg. 5's	55,000	0	0	0
33	Suburban Water Company of Allegheny County	Water	1st Mtg. S.P. 6's	80,000	(	10.5	)
59	Buffalo Valley Telephone Company	Tel.	1st Mtg. 5's	90,000	0	0	0
60	Pennsylvania Electric Company	Elec.	1st & Ref. Mtg. 5's	1,158,000	5	0	9
61	Singer Steam Heat Company	Stm. Ht.	1st Mtg. 6's	20,000	0	0	0
61	Pennsylvania Water & Power Company	Elec.	\$5. Cum. Pref Stock-No Par	17,644 Shs.	\$2.25	0	0
62 & 65	Beaver Valley Water Company	Water	1st Lien & Ref. Mtg. 5's	870,000	5	0	5.5
102	The Plainfield Water Company	Water	1st Mtg. 5's	10,000	0	0	0
114	Metropolitan Edison Company	Elec.	1st Mtg. Series G, 4's	11,710,900	0	2.5	2.5
116	Duquesne Light Company	Elec.	1st Mtg. 3-1/2's	70,000,000	0	2	.5
119	Pennsylvania Water Company	Water	1st Mtg. 4's	2,238,000	0	2.5	0
120	Eric County Electric Company	Elec.	Gen. Mtg. 3-1/2's	400,000	0	0	0
121	Philadelphia Suburban Water Company	Water	1st Mtg. 4's	16,900,000	0	2.5	.5
122	Allentown Bethlehem Gas Company	Gas	1st Mtg. 3-3/4% Series	2,500,000	0.5	0	0
124	Pennsylvania Telephone Corp.	Tel.	1st Mtg. 4% Series	5,200,000	3	0	0
139	Peoples Telephone Corp.	Tel.	1st Mtg. 4's Series A	800,000	0	3	0
142	West Penn Power Company	Elec.	1st Mtg. Series I 3-1/2's	27,000,000	0	2	.5
145	Tioga County Bell Telephone Company	Tel.	1st Mtg. 4's	100,000	0	3	0
161	Towanda Water Works	Water	1st & Ref. Mtg. 4's	185,000	0	0	0
	Payette City Water Company	Water	1st Mtg. 6% Gold Bonds, Series A	18,000	0	0	0
	Harrisburg Suburban Water Company	Water	1st Mtg. 5's	65,000	0	1.5	0
	Ashland Gas Light Company	Gas	1st Mtg. 5's	20,000	0	0	0
	Suburban Water Co. of Allegheny County	Water	1st Mtg. S.P. 4's, Series B	125,000	0	0	0
	Buffalo Valley Water Company	Water	1st Mtg. 4's, Series B	1,500,000	0	3	1
				2,975,000	0	2.5	not determined



DISCOUNT, BROKERAGE OR UNDERWRITING COMMISSION, AND MECHANICAL EXPENSE, ON ALL SECURITY ISSUES APPROVED BY THE COMMISSION TO NOVEMBER 15, 1966, WHICH WERE PROPOSED TO BE DISTRIBUTED ULTIMATELY TO THE GENERAL PUBLIC

	Type	Type of Security	Amount Sold	Commission (%) Brokerage Underwriting	Discount (%)	Mechanical Expense %	Remarks
of Pa.	Water	1st Mtg. 6's	100,000	0	0	0	Not given
	Tel.	1st Mtg. S.F. 5's	280,800	3.5	0	1.5	Not given
	Water	1st Ref. Mtg. 5's	55,000	0	0	0	Not given \$40,000 exchanged for maturing bonds par for par. \$15,000 sold for each at par
Lehigh County	Water	1st Mtg. S.F. 6's	60,000	(	10.5	)	Not given Sold to investment bankers Commission and discount not registered
Company	Tel.	1st Mtg. 5's	90,000	0	0	0	Not given
	Elec.	1st & Ref. Mtg. 5's	1,158,000	5	0	9	Not given
	Stm. & 1st	Mtg. 6's	80,000	0	0	0	Not given
Company	Elec.	\$5. Cum. Pref Stock-No Par	17,644 Shs.	\$2.25	0	0	Not given Sold to public at \$99.50 per share
	Water	1st Lien & Ref. Mtg. 5's	870,000	5	0	5.5	Not given
	Water	1st Mtg. 5's	10,000	0	0	0	Not given
	Elec.	1st Mtg. Series O, 4's	11,710,900	0	2.5	2.5	Not given
	Elec.	1st Mtg. 3-1/2's	70,000,000	0	2	.5	0.4
	Water	1st Mtg. 4's	2,238,000	0	2.5	0	Not given If the securities sell above par bankers agree to refund to the company all in excess of 2.5 commission not on par
Company	Elec.	Gen. Mtg. 3-1/2's	400,000	0	0	0	2.7
	Water	1st Mtg. 4's	18,900,000	0	2.5	.5	Not given Bankers agree to buy at 99% net to company and will take 2.5 commission and refund to the company all over 100.5
Company	Gas	1st Mtg. 3-3/4% Series	2,500,000	0.5	0	0	0.6
Co.	Tel.	1st Mtg. 4% Series	5,200,000	3	0	0	0.7
	Tel.	1st Mtg. 4's Series A	800,000	0	3	0	1.2
	Elec.	1st Mtg. Series I 3-1/2's	27,000,000	0	2	3	0.5
Company	Tel.	1st Mtg. 4's	100,000	0	3	0	Not Given
	Water	1st & Ref. Mtg. 4's	185,000	0	0	0	Not given Exchanged for bonds of issue being retired par for par or sold for cash at par
	Water	1st Mtg. 6% Gold Bonds, Series A	18,000	0	0	0	Not given Exchanged for an equal face amount of notes payable
Company	Water	1st Mtg. 5's	66,000	0	1.5	0	1.5
	Gas	1st Mtg. 5's	20,000	0	0	0	Not given Exchanged for an equal face amount of notes payable
Lehigh County	Water	1st Mtg. S.F. 4's, Series B	125,000	0	0	0	3.0
Company	Water	1st Mtg. 4's, Series B	1,500,000	0	3	1	1.5

No.	Name of Company	Type	Type of Security	Amount Sold	Commission (%)		Discount (%)	Mechanical Expense
					Brokerage	Underwriting		
7	Lehigh Water Company	Water	1st Mtg. 6's	100,000	0	0	0	Not yet
14	The United Telephone Company of Pa.	Tel.	1st Mtg. S.F. 5's	280,800	3.5	0	1.5	Not yet
25	Quakertown Water Company	Water	1st Ref. Mtg. 5's	55,000	0	0	0	Not yet
32	Suburban Water Company of Allegheny County	Water	1st Mtg. S.F. 5's	80,000	(	10.5	)	Not yet
39	Buffalo Valley Telephone Company	Tel.	1st Mtg. 5's	80,000	0	0	0	Not yet
40	Pennsylvania Electric Company	Elec.	1st & Ref. Mtg. 5's	1,158,000	5	0	9	Not yet
41	Essex Steam Heat Company	Stm. Ht	1st Mtg. 6's	20,000	0	0	0	Not yet
41	Pennsylvania Water & Power Company	Elec.	\$5. Cum. Pref 2,000,000 Par	17,644	Shs. \$2.25	0	0	Not yet
42 & 43	Beaver Valley Water Company	Water	1st Lien & Ref. Mtg. 5's	870,000	5	0	5.5	Not yet
108	The Plainfield Water Company	Water	1st Mtg. 5's	10,000	0	0	0	Not yet
114	Metropolitan Edison Company	Elec.	1st Mtg. Series G, 4's	11,710,900	0	2.5	*2.5	Not yet
116	Duquesne Light Company	Elec.	1st Mtg. 3-1/2's	70,000,000	0	2	.5	Not yet
119	Pennsylvania Water Company	Water	1st Mtg. 4's	2,238,000	0	2.5	0	Not yet
120	Erie County Electric Company	Elec.	Gen. Mtg. 3-1/2's	400,000	0	0	0	Not yet
121	Philadelphia Suburban Water Company	Water	1st Mtg. 4's	18,900,000	0	2.5	*.5	Not yet
122	Allentown Bethlehem Gas Company	Gas	1st Mtg. 3-3/4% Series	2,500,000	0.5	0	0	Not yet
124	Pennsylvania Telephone Corp.	Tel.	1st Mtg. 4% Series	5,200,000	3	0	0	Not yet
153	Peoples Telephone Corp.	Tel.	1st Mtg. 4's Series A	800,000	0	3	0	Not yet
142	West Penn Power Company	Elec.	1st Mtg. Series I 3-1/2's	27,000,000	0	2	*.5	Not yet
145	Tioga County Bell Telephone Company	Tel.	1st Mtg. 4's	100,000	0	3	0	Not yet
161	Towanda Water Works	Water	1st & Ref. Mtg. 4's	188,000	0	0	0	Not yet
	Fayette City Water Company	Water	1st Mtg. 6% Gold Bonds, Series A	18,000	0	0	0	Not yet
	Harrisburg Suburban Water Company	Water	1st Mtg. 5's	68,000	0	1.5	0	Not yet
	Ashland Gas Light Company	Gas	1st Mtg. 5's	20,000	0	0	0	Not yet
	Suburban Water Co. of Allegheny County	Water	1st Mtg. S.F. 4's, Series B	125,000	0	0	0	Not yet
	Shenango Valley Water Company	Water	1st Mtg. 4's, Series B	1,500,000	0	3	1	Not yet
	Pennsylvania Power Company	Elec.	1st Mtg. Bonds (4's)	8,978,000	0	2.5	not determin-able	Not yet
	Minersville Water Company	Water	1st Mtg. Series A, 4's	120,000	0	2	"	Not yet

oposed but not yet approved, or approved but not yet issued.  
 unann (%)

Type of Security	Amount Sold	Commission (%)		Discount (%)	Mechanical Expense %	Remarks
		Brokerage	Underwriting			
1st Mtg. 4's	100,000	0	0	0	Not given	
1st Mtg. S.F. 5's	280,800	3.5	0	1.5	Not given	
1st Ref. Mtg. 5's	55,000	0	0	0	Not given	\$40,000 exchanged for maturing bonds par for par. (\$15,000 sold for each at par
1st Mtg. S.F. 6's	90,000		( 10.5 )		Not given	Sold to investment bankers Commission and discount not registered
1st Mtg. 5's	90,000	0	0	0	Not given	
1st & Ref. Mtg. 5's	1,158,000	3	0	0	Not given	
1st Mtg. 6's	20,000	0	0	0	Not given	
25. Cum. Pref Stock-No Par	17,644 Shs.	\$2.25	0	0	Not given	
1st Lien & Ref. Mtg. 5's	670,000	5	0	5.5	Not given	Sold to public at \$69.80 per share
1st Mtg. 5's	10,000	0	0	0	Not given	
1st Mtg. Series G, 4's	11,710,900	0	2.5	2.5	Not given	
1st Mtg. 3-1/2's	70,000,000	0	2	.5	0.4	
1st Mtg. 4's	2,238,000	0	2.5	0	Not given	If the securities sell above par bankers agree to refund to the company all in excess of 2.5 commission not on par
Gen. Mtg. 3-1/2's	400,000	0	0	0	2.7	
1st Mtg. 4's	18,900,000	0	2.5	.5	Not given	Bankers agree to buy at 98% net to company and will take 2.5 commission and refund to the company all over 100.5
1st Mtg. 3-3/4% Series	2,500,000	0.5	0	0	0.6	
1st Mtg. 4% Series	5,200,000	3	0	0	0.7	If the securities sell above par, bankers agree to refund to the company all in excess of 3% commission
1st Mtg. 4's Series A	800,000	0	3	0	1.2	
1st Mtg. Series I 3-1/2's	27,000,000	0	2	3	0.5	
1st Mtg. 4's	100,000	0	3	0	Not Given	
1st & Ref. Mtg. 4's	188,000	0	0	0	Not given	Exchanged for bonds of issue being retired par for par or sold for cash at par
1st Mtg. 6% Gold Bonds. Series A	18,000	0	0	0	Not given	Exchanged for an equal face amount of notes payable
1st Mtg. 5's	88,000	0	1.5	0	1.5	
1st Mtg. 5's	20,000	0	0	0	Not given	Exchanged for an equal face amount of notes payable
1st Mtg. S.F. 4's, Series B	125,000	0	0	0	3.0	
1st Mtg. 4's, Series B	1,500,000	0	3	1	1.8	
1st Mtg. Bonds (4's)	8,978,000	0	2.5	not determin-	Not given	
1st Mtg. Series A, 4's	120,000	0	2	able	Not given	



## BOND YIELDS

EXHIBIT NO. 32

Sheet 1 of 3

AS REPORTED BY "SURVEY OF CURRENT BUSINESS"  
ISSUED BY UNITED STATES DEPARTMENT OF COMMERCE

No.	Year and Month (a)	Standard Statistics(1)					Bond Buyer(2) Domestic Municipals(2) (g)	U. S. Treasury Bonds(3) (h)
		Combined (b)	Industrials (c)	Public Utilities (d)	Railroads (e)	Municipals (f)		
	No. of Issues	45	15	15	15	15	20	
	Monthly Averages:							
1	1913	\$4.78	\$4.97	\$4.74	\$4.42	\$4.22	\$4.45	\$
2	1914	4.75	4.95	4.67	4.46	4.12	4.15	
3	1915	4.83	4.97	4.86	4.64	4.18	4.23	
4	1916	4.73	4.89	4.77	4.49	3.94	4.06	
5	1917	4.99	5.09	5.02	4.75	4.20	4.31	
6	1918	5.47	5.45	5.76	5.20	4.50	4.59	
7	1919	5.51	5.40	5.64	5.29	4.46	4.50	
8	1920	6.18	6.01	6.75	5.79	4.68	5.04	
9	1921	6.05	5.96	6.26	5.97	5.09	5.02	
10	1922	5.19	5.21	5.44	4.68	4.25	4.21	
11	1923	5.22	5.26	5.41	4.68	4.25	4.27	
12	1924	5.07	5.21	5.22	4.78	4.20	4.21	
13	1925	4.98	5.06	5.06	4.67	4.09	4.13	
14	1926	4.77	4.91	4.90	4.51	4.08	4.14	3.42
15	1927	4.65	4.65	4.78	4.31	3.98	3.79	3.34
16	1928	4.43	4.60	4.68	4.34	4.05	4.08	3.33
17	1929	4.64	5.06	4.68	4.60	4.27	4.22	3.60
18	1930	4.66	4.95	4.65	4.52	4.07	4.12	3.26
19	1931	4.91	5.51	4.60	4.61	4.01	4.07	3.31
20	1932:							
21	January	6.04	7.11	5.34	5.70	4.92	4.24	4.32
22	February	6.00	6.98	5.49	5.78	5.03	4.05	4.11
23	March	5.90	6.79	5.30	5.60	4.79	4.78	3.91
24	April	6.23	7.33	5.80	6.18	4.73	4.77	3.64
25	May	6.04	6.36	5.65	5.67	4.77	4.94	3.71
26	June	7.25	9.17	6.77	6.25	4.61	5.09	3.73
27	July	6.97	8.67	5.68	6.60	4.73	4.82	3.55
28	August	5.64	6.95	5.22	5.64	4.50	4.55	3.42
29	September	5.68	6.91	5.06	5.36	4.35	4.57	3.39
30	October	5.89	6.91	5.11	5.43	4.37	4.59	3.39
31	November	6.10	7.32	5.14	5.62	4.35	4.65	3.59
32	December	6.21	7.38	5.66	6.19	4.37	4.51	3.51
33	Monthly Average	5.27	7.46	5.36	5.99	4.55	4.77	3.66
34	1933:							
35	January	6.04	7.22	4.91	5.53	4.27	4.46	3.10
36	February	6.21	7.60	5.11	5.93	4.28	4.92	3.29
37	March	6.71	8.14	5.54	6.45	4.36	5.24	3.44
38	April	5.62	6.27	5.25	6.56	5.05	5.52	3.43
39	May	5.94	6.94	5.26	6.03	5.27	5.35	3.31
40	June	5.39	6.39	5.08	5.34	4.71	5.05	3.22
41	July	5.33	6.16	4.86	4.97	4.50	5.00	3.20
42	August	5.31	6.14	4.84	4.95	4.54	4.95	3.21
43	September	5.51	6.30	5.01	5.29	4.59	4.94	3.20
44	October	5.65	6.49	5.12	5.39	4.60	5.01	3.22
45	November	6.00	6.75	5.41	5.66	4.69	5.32	3.46
46	December	5.69	6.66	5.40	5.54	4.89	5.48	3.53
47	Monthly Average	5.62	6.95	5.18	5.65	4.71	5.14	3.31

## BOND YIELDS

EXHIBIT NO. 32

Sheet 2 of 3

AS REPORTED BY "SURVEY OF CURRENT BUSINESS"  
ISSUED BY UNITED STATES DEPARTMENT OF COMMERCE

Line No.	Year and Month (a)	Standard Statistics(1)					Bond Buyer(2) Domestic Municipals(2)	U S Treasury Bonds(2)
		Combined (b)	Industrials (c)	Public Utilities (d)	Railroads (e)	Municipals (f)		
	No. of Issues	45	15	15	15	15		
1	1934:							
2	January	2.44	2.17	2.08	2.07	2.47	2.47	2.34
3	February	2.44	2.17	2.08	2.07	2.47	2.47	2.32
4	March	2.41	2.14	2.05	2.04	2.44	2.44	2.31
5	April	2.39	2.12	2.03	2.02	2.42	2.42	2.30
6	May	2.39	2.12	2.03	2.02	2.42	2.42	2.30
7	June	2.39	2.12	2.03	2.02	2.42	2.42	2.30
8	July	2.39	2.12	2.03	2.02	2.42	2.42	2.30
9	August	2.39	2.12	2.03	2.02	2.42	2.42	2.30
10	September	2.39	2.12	2.03	2.02	2.42	2.42	2.30
11	October	2.39	2.12	2.03	2.02	2.42	2.42	2.30
12	November	2.39	2.12	2.03	2.02	2.42	2.42	2.30
13	December	2.39	2.12	2.03	2.02	2.42	2.42	2.30
14	Monthly Average	2.39	2.12	2.03	2.02	2.42	2.42	2.30
15	1935:							
16	January	2.41	2.14	2.05	2.04	2.44	2.44	2.31
17	February	2.41	2.14	2.05	2.04	2.44	2.44	2.31
18	March	2.41	2.14	2.05	2.04	2.44	2.44	2.31
19	April	2.41	2.14	2.05	2.04	2.44	2.44	2.31
20	May	2.41	2.14	2.05	2.04	2.44	2.44	2.31
21	June	2.41	2.14	2.05	2.04	2.44	2.44	2.31
22	July	2.41	2.14	2.05	2.04	2.44	2.44	2.31
23	August	2.41	2.14	2.05	2.04	2.44	2.44	2.31
24	September	2.41	2.14	2.05	2.04	2.44	2.44	2.31
25	October	2.41	2.14	2.05	2.04	2.44	2.44	2.31
26	November	2.41	2.14	2.05	2.04	2.44	2.44	2.31
27	December	2.41	2.14	2.05	2.04	2.44	2.44	2.31
28	Monthly Average	2.41	2.14	2.05	2.04	2.44	2.44	2.31
29	1936:							
30	January	2.41	2.14	2.05	2.04	2.44	2.44	2.31
31	February	2.41	2.14	2.05	2.04	2.44	2.44	2.31
32	March	2.41	2.14	2.05	2.04	2.44	2.44	2.31
33	April	2.41	2.14	2.05	2.04	2.44	2.44	2.31
34	May	2.41	2.14	2.05	2.04	2.44	2.44	2.31
35	June	2.41	2.14	2.05	2.04	2.44	2.44	2.31
36	July	2.41	2.14	2.05	2.04	2.44	2.44	2.31
37	August	2.41	2.14	2.05	2.04	2.44	2.44	2.31
38	September	2.41	2.14	2.05	2.04	2.44	2.44	2.31
39	October	2.41	2.14	2.05	2.04	2.44	2.44	2.31
40	November	2.41	2.14	2.05	2.04	2.44	2.44	2.31
41	December	2.41	2.14	2.05	2.04	2.44	2.44	2.31
42	Monthly Average	2.41	2.14	2.05	2.04	2.44	2.44	2.31
43	1937:							
44	January	2.41	2.14	2.05	2.04	2.44	2.44	2.31

N. B. Yields from 1913 to 1936, inclusive taken from page 32 of 1936 Supplement of "Survey of Current Business." Yields for 1934 and January 1937, taken from page 26 of March, 1937 issue of "Survey of Current Business."

(1) "The yield on 45 corporate bonds is computed by Standard Statistics Inc., and is an arithmetic average of the yield to maturity of the same bonds that are included in the index of bond prices shown on the preceding page. It is based on the mean of the monthly high and low prices. Beginning 1929, the indexes have been computed weekly, the monthly index consisting of an average of the 4 or 5 weekly indexes (Wednesday prices) for the month."

(2) "Compiled by The Daily Bond Buyer and represents an average yield obtained by averaging the market values expressed in 'basis' of the bonds of 20 large cities as of the first of each month. However as stated here, the figures are used to represent the condition as of the end of the preceding month; that is, the July 1 figure would be given for June."

Line No.	Year and Month (a)	Standard Statistics(1)					Bond Buyer(2) Domestic Municipals(2)	U S Treasury Bonds(3)
		Combined (b)	Industrials (c)	Public Utilities (d)	Railroads (e)	Municipals (f)		
	No. of Issues	65	18	15	15	15		
<b>1934</b>								
1	January	\$2.44	\$2.17	\$2.08	\$2.07	\$2.07	\$2.09	\$2.24
2	February	2.34	2.10	1.98	1.95	1.98	1.74	2.32
3	March	4.31	3.81	4.09	4.09	4.24	4.34	3.21
4	April	4.79	3.80	4.89	4.60	4.11	4.27	3.12
5	May	4.79	3.89	4.87	4.27	3.98	4.17	3.01
6	June	4.79	3.19	4.81	4.40	3.79	4.01	2.94
7	July	4.89	3.20	4.67	4.67	3.79	4.09	3.09
8	August	4.79	3.13	4.87	4.69	3.81	4.13	2.94
9	September	4.69	3.22	4.64	4.68	3.84	4.21	3.20
10	October	4.77	3.00	4.84	4.68	3.49	3.94	3.08
11	November	4.79	4.00	4.89	4.89	3.87	3.89	3.06
12	December	4.89	4.61	4.67	4.78	3.32	3.81	2.97
13	Monthly Average	4.89	3.30	4.87	4.60	3.75	4.11	3.10
<b>1935</b>								
14	January	4.81	4.75	4.44	4.43	3.45	3.51	2.71
15	February	4.48	4.75	4.41	4.72	3.39	3.75	2.75
16	March	4.78	4.75	4.44	5.10	3.27	3.37	2.54
17	April	4.79	4.77	4.41	5.19	3.25	3.39	2.54
18	May	4.67	4.68	4.34	5.00	3.27	3.40	2.61
19	June	4.89	4.82	4.34	4.82	3.25	3.31	2.61
20	July	4.82	4.82	4.35	4.81	2.95	3.25	2.54
21	August	4.89	4.84	4.35	4.69	2.97	3.34	2.66
22	September	4.87	4.84	4.38	4.90	3.00	3.31	2.78
23	October	4.68	4.81	4.31	5.12	3.10	3.34	2.77
24	November	4.87	4.42	4.17	5.12	3.08	3.23	2.73
25	December	4.80	4.44	4.17	4.97	2.97	3.23	2.73
26	Monthly Average	4.82	4.61	4.31	4.88	3.10	3.30	2.70
<b>1936</b>								
27	January	4.84	4.87	4.60	4.63	2.98	3.11	2.60
28	February	4.89	4.87	4.64	4.48	2.84	3.04	2.62
29	March	4.84	4.88	4.68	4.87	2.70	3.08	2.64
30	April	4.89	4.89	4.69	4.48	2.75	3.18	2.61
31	May	4.84	4.88	4.64	4.68	2.75	3.08	2.60
32	June	4.84	4.84	4.68	4.64	2.78	2.99	2.60
33	July	4.89	4.88	4.68	4.89	2.79	2.99	2.60
34	August	4.88	4.88	4.68	4.88	2.80	2.91	2.43
35	September	4.84	4.80	4.60	4.89	2.68	2.88	2.41
36	October	4.81	4.80	4.65	4.84	2.68	2.88	2.43
37	November	4.18	4.88	4.60	4.88	2.68	2.88	2.39
38	December	4.18	4.89	4.60	4.84	2.61	2.82	2.37
39	Monthly Average	4.87	4.87	4.68	4.48	2.60	2.90	2.47
<b>1937</b>								
40	January	4.18	4.80	4.68	4.19	2.88	2.89	2.74

N. B. Yields from 1913 to 1936, inclusive, taken from page 62 of 1936 Supplement of "Survey of Current Business." Yields for 1936 and January 1937, taken from page 26 of March, 1937 issue of "Survey of Current Business."

(1) "The yield on 45 corporate bonds is computed by Standard Statistics Inc., and is an arithmetic average of the yield to maturity of the same bonds that are included in the index of bond prices shown on the preceding page. It is based on the mean of the monthly high and low prices. Beginning 1939, the indexes have been computed weekly, the monthly index consisting of an average of the 4 or 5 weekly indexes (Wednesday prices) for the month."

(2) "Compiled by The Daily Bond Buyer and represents an average yield obtained by averaging the market values expressed in 'basis' of the bonds of 20 large cities as of the first of each month. However as stated here, the figures are used to represent the condition as of the end of the preceding month; that is, the July 1 figure would be given for June."

(3) "Compiled by U. S. Treasury Department. Represents yields of all outstanding issues of Treasury bonds except those due or callable within 5 years."

**BOND YIELDS BASED ON INDIVIDUAL CLOSING PRICES  
OF 120 DOMESTIC CORPORATIONS  
(40 RAILROADS, 40 PUBLIC UTILITIES AND 40 INDUSTRIALS)  
FROM JANUARY 1, 1932 TO APRIL 23, 1937**

Line No.	Year (a)	Period (Quarters*) (b)	All Companies (c)	40 Railroads (d)	40 Public Utilities (e)	40 Industrials (f)
1	1932	First	55.43 - 7.26	56.78 - 7.93	55.85 - 6.47	56.56 - 7.65
2		Second	7.19 - 8.85	7.77 - 10.10	6.42 - 7.54	6.80 - 7.95
3		Third	6.00 - 8.06	6.81 - 9.18	5.81 - 7.27	5.89 - 7.73
4		Fourth	6.09 - 6.38	6.70 - 7.50	5.87 - 5.91	5.76 - 5.96
5	1933	First	5.89 - 6.70	6.41 - 7.22	5.48 - 6.54	5.60 - 6.35
6		Second	5.80 - 6.72	5.50 - 7.11	5.80 - 6.96	5.00 - 6.22
7		Third	5.30 - 6.70	5.25 - 5.69	5.75 - 6.5	4.81 - 5.01
8		Fourth	5.36 - 6.19	5.34 - 6.46	6.27 - 7.04	4.85 - 5.10
9	1934	First	4.96 - 5.81	4.85 - 5.74	5.43 - 6.74	4.60 - 4.94
10		Second	4.79 - 4.95	4.75 - 4.84	5.22 - 6.40	4.39 - 4.50
11		Third	4.75 - 5.10	4.72 - 5.26	5.17 - 5.48	4.33 - 4.54
12		Fourth	4.79 - 4.98	4.84 - 5.07	5.14 - 5.27	4.36 - 4.51
13	1935	First	4.68 - 4.79	4.72 - 5.36	4.65 - 5.10	4.25 - 4.36
14		Second	4.55 - 4.74	4.88 - 5.22	4.44 - 4.68	4.20 - 4.32
15		Third	4.51 - 4.56	4.90 - 5.02	4.39 - 4.44	4.25 - 4.27
16		Fourth(a)	4.46 - 4.54	4.74 - 5.00	4.34 - 4.43	4.14 - 4.22
17	1936	First	3.98 - 4.12	4.25 - 4.63	3.97 - 4.07	3.85 - 3.97
18		Second	3.95 - 4.01	4.33 - 4.46	3.81 - 3.99	3.88 - 3.89
19		Third	3.78 - 3.93	4.06 - 4.36	3.82 - 3.88	3.44 - 3.54
20		Fourth	3.65 - 3.77	3.95 - 4.04	3.67 - 3.82	3.35 - 3.44
21	1937	January	3.64 - 3.71	3.92 - 4.01	3.66 - 3.72	3.34 - 3.40
22		February	3.71 - 3.80	4.00 - 4.09	3.71 - 3.81	3.41 - 3.52
23		March	3.78 - 3.86	4.08 - 4.27	3.78 - 3.99	3.47 - 3.63
24		April(b)	3.93 - 4.05	4.23 - 4.35	3.94 - 4.04	3.62 - 3.70

N. B. Computed by Moody's and reported in Commercial and Financial Chronicle.

\* Except 1937

(a) Includes period to Nov. 8, 1935; yields for remainder of quarter not being available

(b) To April 23



## PENNSYLVANIA PUBLIC UTILITY COMMISSION


STATEMENT SHOWING YIELDS TO MATURITY OF SECURITY ISSUES,  
APPROVED BETWEEN JULY 1, 1933 AND MAY 7, 1937, WHICH WERE  
FOR A TERM OF TEN YEARS OR MORE, BORE A FIXED RETURN IN DOLLARS,  
WERE OF A TYPE GENERALLY MARKETABLE, AND WERE ACTUALLY SOLD FOR CASH  
TO NON-AFFILIATED INTERESTS.

*Discount  
Value over  
Tax assumed*

Securities Docket No.	Name of Company	Date of Sale or Commission Approval	Date of Maturity	Coupon Rate %	Public Offering Price	Fees Amount Offered to Public	Yield to Maturity
<b>Bonds:</b>							
7	Lehigh Water Company	7-1-33	7-1-47	6	100	100,000	6.0000
16	United Telephone Company of Pennsylvania	7-1-33	1-1-44	92	30,500	5.4978	
32	The Suburban Water Co. of Allegheny Co.	11-1-33	11-1-48	6	89	60,000	7.1537
23	Quakertown Water Company	12-1-33	12-1-63	5	100	44,000	5.0000
46	Hamilton Water Company	5-1-34	11-1-49	6	100	5,000	6.0000
61	Bangor Steam Heat Company	9-1-34	9-1-49	6	100	20,000	6.0000
59	Buffalo Valley Telephone Company	10-1-34	10-1-54	5	100	90,000	5.0000
77	The Trout Run Water Company	1-1-35	1-1-55	4	100	5,000	4.0000
102	The Plainfield Water Company	3-1-35	9-1-50	5	100	10,000	5.0000
93	Beaver Valley Water Company	4-1-35	5-1-60	5	94	100,000	5.4051
62	Beaver Valley Water Company	5-1-35	5-1-60	5	94	770,000	5.4061
116	Duquesne Light Company	6-1-35	6-1-65	3	101	70,000,000	5.4157
16	United Telephone Company of Pennsylvania	7-1-35	1-1-65	5	95	280,500	5.3383
121	Philadelphia Suburban Water Company	9-1-35	9-1-65	4	101	16,000,000	3.9146
122	Allentown-Bethlehem Gas Company	9-1-35	9-1-65	3	100	2,500,000	3.7500
120	Erie County Electric Company	10-1-35	10-1-50	3	100	400,000	3.5000
124	Pennsylvania Telephone Corporation	10-21-35	10-1-65	4	101	5,200,000	3.9429
114	Metropolitan Edison Company	11-29-35	5-1-65	4	102	11,710,900	3.8574
138	The Peoples Telephone Corporation	12-23-35	12-1-60	4	100	800,000	4.0000
145	Tioga County Ball Telephone Company	1-1-36	1-1-66	4	100	100,000	4.0000
142	West Penn Power Company	1-31-36	1-1-66	3	103	27,000,000	3.3409
176	Harrisburg Suburban Water Company	5-1-36	5-1-66	5	100	66,000	5.0000
161	Towanda Water Works	5-1-36	11-1-65	4	100	25,000	4.0000
163	Perkasie Water Supply Company	6-1-36	6-1-66	4	100	80,000	4.0000
167	The Suburban Water Co. of Allegheny Co.	9-1-36	9-1-56	4	100	125,000	4.0000
201	Minersville Water Company	11-1-36	11-1-61	4	100	120,000	4.0000
197	Shenango Valley Water Company	11-30-36	10-1-61	4	99	1,500,000	4.0160
204	Home Telephone Company of Ridgway	12-1-36	12-1-61	4	100	300,000	3.9683
206	Meadville Telephone Company	12-1-36	12-1-61	4	100	350,000	3.9683
200	Pennsylvania Power Company	12-30-36	12-1-61	3	100	6,978,000	3.5000
209	The Roaring Creek Water Company	1-1-37	1-1-67	4	100	300,000	4.0000
119	Pennsylvania Water Company	2-11-37	2-1-67	3	102	2,228,000	3.3633
190	Pittsburgh Railways Company	3-1-37	9-1-46	4	100	750,000	4.0000
235	Pittsburgh Railways Company	3-1-37	3-1-47	4	100	750,000	4.0000
225	The Scranton Electric Company	3-3-37	8-15-67	3	101	6,800,000	3.1979
216	Philadelphia Electric Company	3-11-37	3-1-67	3	102	130,000,000	3.3670
223	Pennsylvania Power Company	4-23-37	12-1-61	4	100	2,000,000	4.0000
<b>Preferred Stocks:</b>							
81	Pennsylvania Water & Power Company	4-1-35		85	99	17,644 shs.	5.0251
240	Pennsylvania Power Company	5-4-37		86	103	5,500 shs.	5.8252

\* Yield computed from interest date nearest to date of actual sale, where latter date is known; otherwise from interest date nearest to date of Commission approval.

# MICROCARD

TRADE MARK 

# 22



MICROCARD<sup>®</sup>  
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES  
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**BOND PRICES AND YIELDS**  
**PENNSYLVANIA ELECTRIC UTILITIES**

Line No.	Description (a)	Interest Rate (b)	Amount Outstanding 12/31/56 (c)	Maturity Date (d)	Source (e)	Price		
						Date (1957) (f)	Price (g)	Yield (h)
1	Alticon & Logan Valley El. Ry. Co.: First Lien & Collateral Trust	4%	\$ 1,408,000	1-1-54	NDQS	6/10	Bid 87	5.18%
2	Chester County Lt. & P. Co.: First Mortgage Gold	6%	287,000	6-1-54	NDQS	2/27	Bid 106	5.46%
3	Duquesne Light Co.: First Mortgage	3 3/4%	70,000,000	6-1-65	NYSE	6/10	Sale 108 1/2	5.31%
4	Erie County Electric Co.: Consolidated Mortgage Gold	6%	948,000	1-1-59	NDQS	2/27	Bid 132 1/2	5.38%
5	Funking Mortgage Gold	6%	78,000	1-1-60	NDQS	2/27	Bid 134	4.26%
6	Erie Lighting Co.: First Mortgage S. F. Gold	6%	4,748,500	4-1-67	NYSE	6/10	Sale 105 1/2	4.67%
7	Keystone Public Service Co.: First Mortgage	5%	4,000,000	11-1-78	NDQS	6/10	Bid 99	5.06%
8	Luzerne County Gas & El. Co.: First Mortgage H. & I. Gold	5%	5,475,000	10-1-48	NDQS	6/10	Bid 107	4.28%
9	S. F. Convertible Gold	7%	2,584,000	7-1-44	NDQS	6/8	Bid 115	4.48%
10	First & Ref. Mortgage	6%	4,485,000	9-1-54	NDQS	6/8	Bid 107	5.34%
11	Metropolitan Edison Co.: First Mortgage Gold "D"	4 1/2%	22,880,800	3-1-68	NYSE	6/10	Sale 104 1/2	4.13%
12	First Mortgage Gold "E"	4%	4,884,000	5-1-71	NYSE	6/10	Sale 108 1/2	5.85%
13	First Mortgage Gold "G"	4%	11,710,900	5-1-65	NDQS	6/10	Bid 108 1/2	5.78%
14	Northern Penna. Pr. Co.: First Ref. Mgs. Gold	5%	1,589,900	6-1-56	NDQS	6/10	Bid 100 1/2	4.98%
15	First Ref. Mgs. Gold	5%	2,089,800	4-15-62	NDQS	6/10	Bid 99 1/2	5.08%
16	Sayre Electric Co.: First Mgs. S. F. Gold	5%	550,500	4-1-47	NDQS	6/4	Bid 100	4.37%
17	Penn Central Lt. & Pr. Co.: First Mgs. Gold	4 1/2%	25,900,000	11-1-77	NYSE	6/10	Sale 95	4.78%
18	First Mgs. Gold	5%	2,175,000	5-1-79	NYSE	6/7	Sale 100 1/2	4.97%

(a) NYSE--New York Stock Exchange  
NDQS--National Daily Quotation Service  
NYSE--New York Curb Exchange

**BOND PRICES AND YIELDS**  
**PENNSYLVANIA ELECTRIC UTILITIES**

Line No.	Description (a)	Interest Rate (b)	Amount Outstanding 12/31/36 (c)	Maturity Date (d)	Price			
					Source (e)	Date (1937) (f)	Price (g)	Yield (h)
	Pennsylvania Electric Co.:							
1	First & Ref. Mtgs.--"F"	4%	\$ 6,697,000	5-1-71	NYSE	8/10	Sale 91 1/2	4.505%
2	First & Ref. Mtgs.--"H"	5%	17,313,500	4-15-82	NDQS	6/10	Bid 99	5.072
	Penn Public Service Corp.:							
3	First & Ref. Mtgs.--"C"	6%	4,549,000	5-1-47	NYSE	6/5	Sale 107	5.098
4	First & Ref. Mtgs.--"D"	5%	2,435,000	12-1-54	NYSE	6/9	Sale 102 1/2	4.787
	Pennsylvania Power & Light Co.:							
5	First Mortgage Gold	4 1/2%	121,000,000	4-1-81	NYSE	6/10	Sale 101	4.448
	Pennsylvania Water & Power Co.:							
6	First Mortgage Gold	5%	10,998,000	1-1-40	NDQS	5/5	Bid 108 3/8	1.569
7	First Ref. Mtgs. Gold--Ser. "B"	4 1/2%	11,134,000	3-1-68	NDQS	6/4	Bid 106 1/2	4.124
	Philadelphia Electric Co.:							
8	First & Ref. Mtgs.	3 1/2%	130,000,000	3-1-87	NYSE	6/10	Sale 103 1/8	3.333
	Philadelphia Elec. Power Co.:							
9	First Mortgage Gold	5 1/2%	25,970,000	2-1-72	NYSE	6/10	Sale 110	4.697
	Philadelphia Hydro Elec. Co.:							
10	First Mortgage Gold	5%	130,000	1-1-39	NDQS	6/8	Bid 102 1/2	3.262
	Safe Harbor Water Pr. Corp'n.:							
11	First Mortgage S. E. Gold	4 1/2%	21,000,000	6-1-79	NYSE	6/10	Sale 108 1/2	4.075
	Scranton Electric Co.:							
12	First & Ref. Mtgs. (New First)	5%	5,750,000	7-1-37	NDQS	2/27	Bid 100 7/8	3.222
	West Penn Power Co.:							
13	First Mortgage--"E"	5%	12,500,000	3-1-63	NYSE	6/10	Sale 119	3.827
14	First Mortgage--"H"	4%	10,000,000	7-1-61	NYSE	6/9	Sale 109	3.446
15	First Mortgage--"I"	3 1/2%	27,000,000	1-1-66	NYSE	6/10	Sale 105	3.178

(a) NYSE--New York Stock Exchange  
 NDQS--National Daily Quotation Service  
 NYCE--New York Curb Exchange

## PREFERRED STOCK PRICES AND YIELDS

## PENNSYLVANIA ELECTRIC UTILITIES

Line No.	Description (a)	Dividend Rate (b)	Par Value per Share (c)	Par or Stated Value of Outstanding Stock Dec. 31, 1936 (d)	Source (e)	Price (f)		Yield (%) (h)
						Date (1937) (g)	Price (g)	
1	Duquesne Light Co.	5%	\$100	\$27,500,000.00	NYSE	6/9	Sale \$113 1/8	4.42%
2	Lehigh Valley Public Service Co.	\$2.80	Non Par	548,899.00	NDQS	6/9	Bid 45	6.22%
3	Luzerne County Gas & El. Co.}	\$7.00	Non Par	2,783,850.98	NDQS	6/10	Bid 105 3/4	6.63%
4		\$6.00	Non Par	500,000.00	NDQS	6/10	Bid 104 1/2	5.74%
	Metropolitan Edison Co.:							
5	Cumulative Preferred	\$7.00	Non Par	1,151,800.00	SS	5/8	Bid 107	6.54%
6	Cumulative Preferred	\$6.00	Non Par	9,588,600.00	NDQS	6/10	Bid 92	6.52%
7	Cumulative Preferred	\$5.00	Non Par	568,600.00	NDQS	6/9	Bid 75	6.67%
8	Prior Preferred	\$7.00	Non Par	575,400.00	NDQS	6/9	Bid 103	6.80%
9	Prior Preferred	\$6.00	Non Par	9,180,200.00	NDQS	6/10	Bid 102 1/2	5.85%
10	Prior Preferred	\$5.00	Non Par	19,900.00	SS	4/30	Bid 100	5.00%
11	Penn Central Light & Power Co.}	\$5.00	Non Par	8,995,404.50	NDQS	6/10	Bid 60	8.33%
12		\$2.80	Non Par	4,001,998.50	NYSE	6/10	Sale 37	7.57%
13	Pennsylvania Power Co.}	\$6.60	Non Par	996,217.50	NDQS	6/10	Bid 103 1/4	6.39%
14		\$6.00	Non Par	1,800,525.00	NDQS	6/10	Bid 101 7/8	5.89%
15	Pennsylvania Power & Light Co.}	\$7.00	Non Par	Not segregated	NYSE	6/10	Sale 98	7.14%
16		\$6.00	Non Par		NYSE	6/10	Sale 94	6.38%
17		\$5.00	Non Par		NDQS	5/10	Bid 85 1/2	5.88%
18	Pennsylvania Water & Power Co.	\$5.00	Non Par	2,150,895.00	NDQS	6/10	Bid 108 3/4	4.60%
19	Philadelphia Electric Co.	\$5.00	Non Par	\$7,607,352.32	PSE	6/10	Sale 112	4.40%
20	Philadelphia Electric Power Co.	8%	\$25.00	12,000,000.00	PSE	6/10	Sale 32 3/4	6.17%
21	West Penn Power Co.}	6%		17,000,000.00	NYSE	6/10	Sale 111 1/2	5.38%
22		7%		12,707,700.00	NYSE	6/7	Sale 120 3/4	5.80%

(a) NYSE = New York Stock Exchange  
 NDQS = National Daily Quotation Service  
 SS = Standard Statistics Bond Service  
 NYCE = New York Curb Exchange  
 PSE = Philadelphia Stock Exchange

FINANCIAL AND OPERATING STATISTICS  
PENNSYLVANIA ELECTRIC UTILITIES  
1936

Line No	Name of Utility (a)	Fixed Capital (b)	Depreciation Reserve (c)	Bonds (d)	Preferred Stock (e)	Common Stock (f)	Income Available for Interest and Amortization of Discount and Expense (g)	Interest and Amortization (b) (h)
1	Altoona & Logan Valley El. Ry. Co.	\$ 4,193,663	\$ 29,561	\$ 1,902,900		\$ 12,686	\$ 155,562	\$ 61,146
2	Chester County Light & Power Co.	989,265	125,853	267,000		585,000	58,765	17,783
3	Duquesne Light Company	173,362,449	13,551,620	70,000,000	27,500,000	56,813,120	13,553,266	2,775,233
4	Erie County Electric Company	5,576,672	917,812	1,402,000		3,937,500	548,258	80,230
5	Erie Lighting Company	10,990,129	1,899,950	4,768,500	15,680	2,100,000	511,071	280,496
6	Keystone Public Service Company	5,466,735	1,014,727	4,000,000	548,899	115,000	508,871	204,577
7	Luzerne County Gas & Electric Co.	18,532,270	1,487,037	10,496,000	3,283,651	4,417,350	1,215,062	734,150
8	Metropolitan Edison Company	85,866,065	14,301,133	40,615,900	21,082,500	14,271,130	5,619,725	2,046,978
9	Northern Penna. Power Company	7,327,589	1,085,233	3,990,000		2,213,000	450,171	223,261
10	Penn Central Light & Power Co.	42,635,460	2,240,519	27,875,000	12,997,403	166,000	2,472,031	1,367,481
11	Pennsylvania Electric Company	54,483,682	2,471,450	32,278,500		23,500,000	3,251,267	1,786,653
12	Penna. Power Company	13,034,104	1,242,906	6,973,000	2,736,743	2,500,000	856,899	385,505
13	Penna. Power and Light Company	238,198,177	19,761,664	131,400,000	77,928,256	(a)	14,157,217	6,283,624
14	Pennsylvania Water & Power Co.	29,873,641	4,853,040	22,172,000	2,130,895	10,868,313	3,232,458	1,054,519
15	Philadelphia Electric Company	312,700,800	33,491,848	129,995,500	27,607,332	137,793,678	26,543,300	6,103,943
16	Phila. Electric Power Company	7,501,065	249,951	35,970,000	12,000,000	50,000	3,454,179	2,293,705
17	Phila. Hydro Electric Company	370,704	192,151	130,000		75,500	16,145	7,070
18	Safe Harbor Water Power Co.	27,850,807	483,576	21,000,000		8,194,725	1,329,506	1,000,476
19	Scranton Electric Company	31,544,721	10,837,151	18,756,000	5,324,600	6,071,866	2,453,503	465,803
20	West Penn Power Company	101,803,165	15,075,215	49,500,000	29,707,200	27,750,000	9,873,013	2,463,596

(a) Not segregated. Included with Preferred Stock.

(b) Entire interest requirements; bonds and unfunded debt.



FINANCIAL AND OPERATING STATISTICS  
PENNSYLVANIA ELECTRIC UTILITIES  
1936

Fixed Capital (b)	Depreciation Reserve (c)	Bonds (d)	Preferred Stock (e)	Common Stock (f)	Income Available for Interest and Amortization of Discount and Expense (g)	Interest and Amortization (b) (h)	Income Available for Preferred Dividends (i)	Preferred Dividend Requirements (j)	Times Interest Earned (k)	Times Preferred Dividends Earned (l)
\$ 4,193,663	\$ 29,561	\$ 1,902,900	\$	\$ 12,666	\$ 155,562	\$ 61,166	\$ 94,416	\$	2.5	
989,265	125,853	287,000		585,000	58,765	17,783	40,982		3.3	
173,352,449	13,351,620	70,000,000	27,500,000	56,813,120	13,553,266	2,775,233	10,778,033	1,375,000	4.9	7.8
5,576,672	917,812	1,402,000		3,937,500	548,258	80,230	468,028		6.8	
10,990,129	1,899,950	4,768,500	15,680	2,100,000	511,071	280,496	230,574	1,859	1.8	124.0
5,466,795	1,014,727	4,000,000	548,899	115,000	508,871	204,577	304,294	33,429	2.5	9.1
18,532,270	1,487,037	10,496,000	3,283,851	4,417,350	1,215,062	734,150	480,912	233,265	1.7	2.1
85,866,065	14,301,133	40,615,900	21,082,500	14,271,130	5,619,725	2,046,978	3,572,747	1,276,317	2.7	2.8
7,327,539	1,085,233	3,990,000		2,213,000	450,171	223,281	226,860		2.0	
42,635,160	2,240,519	27,875,000	12,997,403	166,600	2,472,031	1,367,481	1,104,550	852,611	1.8	1.3
54,483,682	2,471,450	32,278,500		23,500,000	3,251,267	1,786,653	1,464,614		1.8	
13,034,104	1,242,906	6,973,000	2,766,743	2,300,000	856,899	365,505	491,394	174,508	2.3	2.8
238,198,177	19,761,664	131,400,000	77,928,256	(a)	14,157,217	6,283,624	7,913,593	3,846,543	2.3	2.1
29,873,641	4,653,040	22,132,000	2,130,895	10,868,313	3,232,458	1,054,519	2,177,939	107,465	3.1	20.3
312,700,800	33,491,848	129,995,500	27,607,332	137,793,678	26,543,300	6,103,943	20,436,357	1,400,290	4.3	14.6
7,501,065	249,951	35,970,000	12,000,000	50,000	3,454,179	2,293,705	1,160,474	960,000	1.5	1.2
370,704	192,151	130,000		75,500	16,145	7,070	9,075		2.3	
27,850,807	483,576	21,000,000		8,194,725	1,329,506	1,000,478	329,027		1.3	
31,544,721	10,837,151	18,756,000	5,324,800	6,071,866	2,453,503	465,803	1,987,700	319,488	5.3	6.2
101,803,165	15,075,215	49,500,000	29,707,700	27,750,000	9,873,013	2,463,596	7,409,417	1,909,539	4.0	3.9

(a) Not segregated. Included with Preferred Stock.

(b) Entire interest requirements; bonds and unfunded debt.

NEW YORK MONEY RATES  
FROM JANUARY 1, 1932 TO APRIL 23, 1937

Line No.	Year	Period (Quarters) (a)	Call Loans (b)	Time Money (c)	Commercial Paper	
					Choice (d)	Other (e)
1	1932	First	2 1/2 - 3 1/4	2 1/2 - 4	2 1/2 - 4	2 1/2 - 4 1/4
2		Second	2 1/2	1 - 3	2 - 3 1/4	3 - 4
3		Third	2 - 2 1/4	1 - 1 1/4	1 1/2 - 2 1/4	2 1/4 - 3
4		Fourth	1 - 2	1 - 1 1/4	1 1/2 - 2 1/4	2 - 2 1/4
5	1933	First	1 - 5	1 - 5	1 1/2 - 4	1 1/2 - 4
6		Second	1 - 3	1 - 2 1/4	1 1/2 - 3	1 1/2 - 3
7		Third	1 - 1	1 - 2	1 1/2	1 1/2
8		Fourth	1 - 1	1 - 1 1/4	1 1/2	1 1/2
9	1934	First	1	1 - 1 1/4	1 - 1 1/4	1 1/2 - 1 1/4
10		Second	1	1 - 1 1/4	1 - 1	1 - 1 1/4
11		Third(a)				
12		Fourth	1	1 - 1 1/4	1	1
13	1935	First	1	1 - 1 1/4	1	1
14		Second	1 - 1	1 - 1	1	1
15		Third	1	1 1/8 - 1 1/2	1	1
16		Fourth(b)	1	1	1	1
17	1936	First(c)	1	1	1	1
18		Second	1 - 1	1 - 1 1/4	1 (e)	1 (e)
19		Third	1	1 1/4	1	1
20		Fourth	1	1 1/4	1	1
21	1937	First	1	1 1/4	1 - 1	1
22		Second(d)	1	1 1/4 - 1 1/2	1	1

N. B. As reported in Commercial and Financial Chronicle.

(a) Figures not available.

(b) Figures available only for week ending November 8th.

(c) Figures available only for part of period.

(d) To April 23, 1937.



# CORPORATION PROFITS

## EARNINGS ON COMMON STOCKS ARRANGED ACCORDING TO RATIOS OF EARNINGS TO HIGH MARKET PRICES OF COMMON STOCKS

Line No.	Ratio of Earnings to Market Prices (a)	1932			1933			1934			1935			1936		
		No. of Cos. (b)	% of Total (c)	% of Accumulated Percentage (d)	No. of Cos. (e)	% of Total (f)	% of Accumulated Percentage (g)	No. of Cos. (h)	% of Total (i)	% of Accumulated Percentage (j)	No. of Cos. (k)	% of Total (l)	% of Accumulated Percentage (m)	No. of Cos. (n)	% of Total (o)	% of Accumulated Percentage (p)
163 CLASSIFIED COMPANIES																
1	Deficits	82	50.9%	50.9%	62	38.0%	38.0%	47	28.8%	28.8%	37	22.8%	22.8%	16	9.9%	9.9%
2	0-1%	6	3.7	54.6	6	3.7	41.7	10	6.1	34.9	6	3.7	26.5	2	1.2	11.2
3	1-2	5	3.1	57.7	13	8.0	49.7	4	2.5	37.4	4	2.5	29.0	3	1.9	13.0
4	2-3	3	1.9	59.6	7	4.3	54.0	13	8.0	45.4	10	6.1	35.1	11	6.8	19.8
5	3-4	10	6.2	65.8	17	10.4	64.4	14	9.6	54.0	16	9.8	44.9	23	14.2	34.2
6	4-5	17	10.6	76.4	18	11.0	75.4	18	11.0	65.0	24	14.7	59.6	31	19.1	53.1
7	5-6	9	5.6	82.0	16	9.8	85.2	26	16.0	81.0	28	17.2	76.8	30	18.5	71.8
8	6-7	9	5.6	87.6	10	6.2	91.4	14	8.6	89.6	13	8.0	84.8	16	9.9	81.5
9	7-8	3	1.9	89.5	9	5.5	96.9	8	4.9	94.5	10	6.1	90.9	8	4.9	86.4
10	8-9	6	3.7	93.2	4	2.5	99.4	2	1.2	95.7	11	6.7	97.6	13	8.0	94.4
11	9-10	6	3.7	96.9	1	.6	100.0	3	1.8	97.5	1	.6	98.2	3	1.9	96.8
12	Over 10	5	3.1	100.0	0		100.0	4	2.5	100.0	3	1.8	100.0	6	3.7	100.0
13	Totals	161	100.0		163	100.0		163	100.0		163	100.0		162	100.0	
411 UNCLASSIFIED COMPANIES																
14	Deficits										116	28.2	28.2	80	19.5	19.5
15	0-1%										19	4.6	32.8	15	3.7	23.2
16	1-2										15	3.7	36.5	22	5.4	29.4
17	2-3										33	8.0	44.5	32	7.8	36.4
18	3-4										31	7.6	52.1	27	6.6	43.4
19	4-5										38	9.2	61.3	45	10.9	53.1
20	5-6										31	7.5	68.8	37	9.0	62.1
21	6-7										37	9.0	77.8	45	10.9	73.8
22	7-8										29	7.1	84.9	37	9.0	82.2
23	8-9										30	7.3	92.2	31	7.5	90.5
24	9-10										12	2.9	95.1	17	4.1	94.4
25	Over 10										20	4.9	100.0	23	5.6	100.0
26	Totals										411	100.0		411	100.0	
574 COMPANIES																
	Deficits										153	26.6	26.6	96	16.8	16.8
	0-1%										25	4.4	31.0	17	3.0	16.8
	1-2										19	3.3	34.3	23	4.4	23.2
	2-3										43	7.5	41.8	43	7.5	33.1
	3-4										47	8.2	50.0	50	8.7	44.4
	4-5										62	10.8	60.8	76	13.3	58.1
	5-6										89	10.3	71.1	67	11.7	64.4
	6-7										50	8.7	79.8	61	10.6	74.6

CORPORATION PROFITS

EARNINGS ON COMMON STOCKS ARRANGED ACCORDING TO RATIOS OF EARNINGS  
TO HIGH MARKET PRICES OF COMMON STOCKS

Accumulated Percentage (d)	No. of Cos. (e)	1933		No. of Cos. (h)	1934		No. of Cos. (k)	1935		No. of Cos. (n)	1936		1936 Earnings-4-3-37 Price		
		% of Accumulated Total (f)	Percentage (g)		% of Accumulated Total (i)	Percentage (j)		% of Accumulated Total (l)	Percentage (m)		% of Accumulated Total (o)	Percentage (p)	No. of Cos. (q)	% of Accumulated Total (r)	Percentage (s)
163 CLASSIFIED COMPANIES															
50.9%	62	38.0%	38.0%	47	28.8%	28.8%	37	22.8%	22.8%	16	9.9%	9.9%	16	9.9%	9.9%
54.6	6	3.7	41.7	10	6.1	34.9	6	3.7	26.5	2	1.2	11.1	2	1.2	11.1
57.7	13	8.0	49.7	4	2.5	37.4	4	2.5	29.0	3	1.9	13.0	4	2.5	13.6
59.6	7	4.5	54.0	13	8.0	45.4	10	6.1	35.1	11	6.8	19.8	12	7.4	21.0
65.8	17	10.4	64.4	14	9.6	54.0	16	9.8	44.9	23	14.2	34.0	13	8.0	29.0
76.4	18	11.0	75.4	18	11.0	65.0	24	14.7	59.6	31	19.1	53.1	23	14.2	43.2
82.0	16	9.8	85.2	26	16.0	81.0	28	17.2	76.8	30	18.5	71.6	22	13.6	56.8
87.6	10	6.2	91.1	14	8.6	89.6	13	8.0	84.8	16	9.9	81.5	25	15.4	72.2
89.5	9	5.5	96.9	8	4.9	94.5	10	6.1	90.9	8	4.9	86.4	14	8.7	80.9
93.2	4	2.5	99.4	2	1.2	95.7	11	6.7	97.6	13	8.0	94.4	12	7.4	88.3
96.9	1	.6	100.0	5	1.8	97.5	1	.6	98.2	3	1.9	96.3	7	4.3	92.6
100.0	0		100.0	4	2.5	100.0	3	1.8	100.0	6	3.7	100.0	12	7.4	100.0
	163	100.0		163	100.0		163	100.0		162	100.0		162	100.0	
411 UNCLASSIFIED COMPANIES															
							116	28.2	28.2	60	19.5	19.5	60	19.5	19.5
							19	4.6	32.8	15	3.7	23.2	15	3.6	23.1
							15	3.7	36.5	22	5.4	28.6	20	4.9	28.0
							33	8.0	44.5	32	7.8	36.4	23	5.6	33.6
							31	7.6	52.1	27	6.6	43.0	20	4.9	38.5
							38	9.2	61.3	45	10.9	53.9	36	8.4	46.9
							31	7.5	68.8	37	9.0	62.9	41	10.0	56.9
							37	9.0	77.8	45	10.9	73.8	46	11.2	68.1
							29	7.1	84.9	37	9.0	82.8	35	8.5	76.6
							30	7.3	92.2	31	7.5	90.3	27	6.6	83.2
							12	2.9	95.1	17	4.1	94.4	30	7.3	90.5
							20	4.9	100.0	23	5.6	100.0	39	9.5	100.0
							411	100.0		411	100.0		411	100.0	
574 COMPANIES															
							153	26.6	26.6	96	16.8	16.8	96	16.8	16.8
							25	4.4	31.0	17	3.0	19.8	17	3.0	19.8
							19	3.3	34.3	23	4.4	24.2	24	4.2	24.0
							43	7.5	41.8	43	7.5	31.9	33	6.1	30.1
							47	8.2	50.0	50	8.7	40.4	33	5.8	35.9
							62	10.8	60.8	76	13.3	53.7	58	10.1	48.0
							69	10.3	71.1	67	11.7	65.4	63	11.0	57.0
							60	8.7	77.8	61	10.6	76.0	71	12.4	69.4
							39	6.8	86.6	45	7.2	83.9	49	8.6	78.0
													39	6.8	84.8



# TO HIGH MARKET PRICES OF COMMON STOCKS

Line No.	Ratio of Earnings to Market Prices (a)	No. of Cos. (b)	1932		No. of Cos. (e)	1933		No. of Cos. (h)	1934		No. of Cos. (k)	1935		No. of Cos. (n)	1936	
			% of Accumulated Total (c)	Percentage (d)		% of Accumulated Total (f)	Percentage (g)		% of Accumulated Total (i)	Percentage (j)		% of Accumulated Total (l)	Percentage (m)		% of Accumulated Total (o)	Percentage (p)
163 CLASSIFIED COMPANIES																
1	Deficits	62	50.9%	50.9%	62	38.0%	38.0%	47	28.8%	28.8%	37	22.8%	22.8%	16	9.9%	
2	0-15	6	3.7	54.6	6	3.7	41.7	10	6.1	34.9	6	3.7	26.5	2	1.2	
3	1-2	5	3.1	57.7	13	8.0	49.7	4	2.5	37.4	4	2.5	29.0	3	1.9	
4	2-3	3	1.9	59.6	7	4.3	54.0	13	8.0	45.4	10	6.1	35.1	11	6.8	
5	3-4	10	6.2	65.8	17	10.4	64.4	14	8.6	54.0	16	9.8	44.9	23	14.2	
6	4-5	17	10.6	76.4	18	11.0	75.4	18	11.0	65.0	24	14.7	59.6	31	19.1	
7	5-6	9	5.6	82.0	16	9.8	85.2	26	16.0	81.0	28	17.2	76.8	30	18.5	
8	6-7	9	5.6	87.6	10	6.2	91.4	14	8.6	89.6	13	8.0	84.8	16	9.9	
9	7-8	3	1.9	89.5	9	5.5	96.9	8	4.9	94.5	10	6.1	90.9	8	4.9	
10	8-9	6	3.7	93.2	4	2.5	99.4	2	1.2	95.7	11	6.7	97.6	13	8.0	
11	9-10	6	3.7	96.9	1	.6	100.0	3	1.8	97.5	1	.6	98.2	3	1.9	
12	Over 10	5	3.1	100.0	0		100.0	4	2.5	100.0	3	1.8	100.0	6	3.7	100.0
13	Totals	161	100.0		163	100.0		163	100.0		163	100.0		162	100.0	
411 UNCLASSIFIED COMPANIES																
14	Deficits										116	28.2	28.2	80	19.5	
15	0-15										19	4.6	32.8	15	3.7	
16	1-2										15	3.7	36.5	22	5.4	
17	2-3										33	8.0	44.5	32	7.8	
18	3-4										31	7.6	52.1	27	6.6	
19	4-5										38	9.2	61.3	45	10.9	
20	5-6										31	7.5	68.8	37	9.0	
21	6-7										37	9.0	77.8	45	10.9	
22	7-8										29	7.1	84.9	37	9.0	
23	8-9										30	7.3	92.2	31	7.5	
24	9-10										12	2.9	95.1	17	4.1	
25	Over 10										20	4.9	100.0	23	5.6	100.0
26	Totals										411	100.0		411	100.0	
574 COMPANIES																
	Deficits										153	26.6	26.6	96	16.8	
	0-15										25	4.4	31.0	17	3.0	
	1-2										19	3.3	34.3	23	4.4	
	2-3										43	7.5	41.8	43	7.5	
	3-4										47	8.2	50.0	50	8.7	
	4-5										62	10.8	60.8	76	13.3	
	5-6										69	10.3	71.1	67	11.7	
	6-7										50	8.7	79.8	61	10.6	
	7-8										39	6.8	86.6	45	7.9	
	8-9										41	7.1	93.7	44	7.7	
	9-10										13	2.3	96.0	20	3.4	
	Over 10										23	4.0	100.0	29	5.0	
	Totals										574	100.0		573	100.0	

EARNINGS ON COMMON STOCKS ARRANGED ALPHABETICALLY  
TO HIGH MARKET PRICES OF COMMON STOCKS

1933			1934			1935			1936			1936 Earnings-4-5-37 Price		
No. of Cos. (e)	% of Accumulated Total (f)	Percentage (g)	No. of Cos. (h)	% of Accumulated Total (i)	Percentage (j)	No. of Cos. (k)	% of Accumulated Total (l)	Percentage (m)	No. of Cos. (n)	% of Accumulated Total (o)	Percentage (p)	No. of Cos. (q)	% of Accumulated Total (r)	Percentage (s)
163 CLASSIFIED COMPANIES														
62	38.0%	38.0%	47	28.8%	28.8%	37	22.8%	22.8%	16	9.9%	9.9%	16	9.9%	9.9%
6	3.7	41.7	10	6.1	34.9	6	3.7	26.5	2	1.2	11.1	2	1.2	11.1
15	8.0	49.7	4	2.5	37.4	4	2.5	29.0	3	1.9	13.0	4	2.5	13.6
7	4.5	54.0	15	8.0	45.4	10	6.1	36.1	11	6.8	19.8	12	7.4	21.0
17	10.4	64.4	14	8.6	54.0	16	9.8	44.9	23	14.2	34.0	13	8.0	29.0
18	11.0	75.4	18	11.0	65.0	24	14.7	59.6	31	19.1	53.1	23	14.2	43.2
16	9.8	85.2	26	16.0	81.0	28	17.2	76.8	30	16.5	71.6	22	13.6	56.8
10	6.2	91.4	14	8.6	89.6	13	8.0	84.8	16	9.2	81.5	26	16.4	72.2
9	5.5	96.9	8	4.9	94.5	10	6.1	90.9	8	4.2	86.4	14	8.7	80.9
4	2.5	99.4	2	1.2	95.7	11	6.7	97.6	13	8.0	94.4	12	7.4	88.3
1	.6	100.0	3	1.8	97.5	1	.6	98.2	3	1.9	96.3	7	4.3	92.6
0		100.0	4	2.5	100.0	3	1.8	100.0	6	3.7	100.0	12	7.4	100.0
163	100.0		163	100.0		163	100.0		162	100.0		162	100.0	
411 UNCLASSIFIED COMPANIES														
						116	28.2	28.2	80	19.5	19.5	80	19.5	19.5
						19	4.6	32.8	15	3.7	23.2	15	3.6	23.1
						15	3.7	36.5	22	5.4	28.6	20	4.9	28.0
						33	8.0	44.5	32	7.8	36.4	23	5.6	33.6
						31	7.6	52.1	27	6.6	43.0	20	4.9	38.5
						38	9.2	61.3	45	10.9	53.9	36	8.4	46.9
						31	7.5	68.8	37	9.0	62.9	41	10.0	56.9
						37	9.0	77.8	45	10.9	72.8	46	11.2	69.1
						29	7.1	84.9	37	9.0	82.8	35	8.5	76.6
						30	7.3	92.2	31	7.5	90.3	27	6.6	83.2
						12	2.9	95.1	17	4.1	94.4	30	7.3	90.5
						20	4.9	100.0	23	5.6	100.0	39	9.5	100.0
						411	100.0		411	100.0		411	100.0	
574 COMPANIES														
						155	26.6	26.6	96	16.8	16.8	96	16.8	16.8
						25	4.4	31.0	17	3.0	19.8	17	3.0	19.8
						19	3.3	34.3	23	4.4	24.2	24	4.2	24.0
						43	7.5	41.8	43	7.5	31.7	33	6.1	30.1
						47	8.2	50.0	50	8.7	40.4	33	5.8	35.9
						62	10.8	60.8	76	13.3	53.7	58	10.1	46.0
						69	10.3	71.1	67	11.7	65.4	63	11.0	57.0
						60	8.7	79.8	61	10.6	76.0	71	12.4	69.4
						39	6.8	86.6	45	7.2	83.9	42	8.6	78.0
						41	7.1	93.7	44	7.7	91.6	39	6.8	84.6
						13	2.3	96.0	20	3.4	95.0	37	6.4	91.2
						25	4.0	100.0	29	3.0	100.0	51	8.8	100.0
						574	100.0		573	100.0		573	100.0	



## CORPORATION PROFITS

EARNINGS ON COMMON STOCKS ARRANGED ACCORDING TO  
RATIOS OF EARNINGS TO LOW MARKET PRICES OF COMMON STOCKS

Line No.	Ratio of Earnings to Market Prices (a)	1932		1933		1934		1935		1936						
		No. of Cos. (b)	% of Accumulated Total (c) Percentage (d)	No. of Cos. (e)	% of Accumulated Total (f) Percentage (g)	No. of Cos. (h)	% of Accumulated Total (i) Percentage (j)	No. of Cos. (k)	% of Accumulated Total (l) Percentage (m)	No. of Cos. (n)	% of Accumulated Total (o) Percentage (p)					
163 CLASSIFIED COMPANIES																
1	Deficits	82	51.0%	51.0%	82	38.0%	38.0%	47	28.8%	28.8%	37	22.8%	22.8%	18	9.2%	9.2%
2	0-1	1	.6	51.6	1	.6	38.6	5	3.1	31.9	3	1.8	24.6	1	.6	10.6
3	1-2	2	1.2	52.8	2	1.2	39.8	6	3.7	35.6	2	1.2	25.8	1	.6	11.1
4	2-3	2	1.2	54.0	2	1.2	41.0	1	.6	36.2	3	1.8	27.6	3	1.8	12.9
5	3-4	2	1.2	55.2	2	1.2	42.2	4	2.5	38.7	4	2.5	30.1	3	1.8	14.7
6	4-5	4	2.5	57.7	3	1.9	44.1	5	3.1	41.6	4	2.5	32.6	8	4.9	19.6
7	5-6	0	0.0	57.7	5	3.1	47.2	15	9.2	51.0	14	8.5	41.1	21	13.0	32.6
8	6-7	2	1.2	58.9	7	4.3	51.5	14	8.6	52.6	18	11.0	52.1	20	12.4	45.0
9	7-8	3	1.9	60.8	4	2.5	54.0	16	9.8	62.4	13	8.0	60.1	28	17.3	62.3
10	8-9	7	4.4	65.2	10	6.1	60.1	10	6.1	75.5	10	6.1	66.2	12	7.4	69.7
11	9-10	5	3.1	68.3	13	8.0	68.1	10	6.1	81.6	6	3.7	69.9	10	6.2	75.9
12	Over 10	51	31.7	100.0	52	31.9	100.0	30	18.4	100.0	49	30.1	100.0	39	24.1	100.0
13	Totals	161	100.0		163	100.0		163	100.0		163	100.0		162	100.0	
411 UNCLASSIFIED COMPANIES																
14	Deficits										116	28.2	28.2	80	19.5	19.5
15	0-1										9	2.2	30.4	9	2.2	21.7
16	1-2										7	1.7	32.1	6	1.5	23.2
17	2-3										8	2.0	34.1	14	5.4	26.6
18	3-4										9	2.2	36.3	20	4.9	31.5
19	4-5										18	4.4	40.7	13	3.2	34.7
20	5-6										12	2.9	43.6	27	6.6	41.3
21	6-7										23	5.6	49.2	22	5.3	46.6
22	7-8										18	4.4	53.6	33	8.0	54.6
23	8-9										17	4.1	57.7	22	5.3	59.9
24	9-10										20	4.9	62.6	30	7.3	67.2
25	Over 10										154	37.4	100.0	135	32.8	100.0
26	Totals										411	100.0		411	100.0	
574 COMPANIES																
27	Deficits										153	26.6	26.6	96	16.8	16.8
28	0-1										12	2.1	28.7	10	1.7	18.5
29	1-2										9	1.6	30.3	7	1.2	19.7
	2-3										11	1.9	32.2	17	3.0	22.7
	3-4										13	2.3	34.5	23	4.0	26.7
	4-5										22	3.9	38.4	21	3.7	30.4
	5-6										26	4.5	42.9	48	8.4	36.9
	6-7										41	7.1	50.0	42	7.3	46.1
	7-8										31	5.4	55.4	61	10.6	56.7
	8-9										27	4.7	60.1	34	5.9	62.6
	9-10										28	4.5	64.6	40	7.0	69.6
	Over 10										203	35.4	100.0	174	30.4	100.0
	Totals										574	100.0		573	100.0	

RATIOS OF CORPORATE EARNINGS  
TO MARKET VALUES OF COMMON STOCKS

Line No.		Number of Companies	Ratio of Earnings to High Market Prices					Ratio of 1934 Earnings to Closing Price 4/3/37
			1932	1933	1934	1935	1936	
Classified Companies:								
1	Automobile	10	* %	* %	* %	* %	4.36%	5.03%
2	Building Material	9	*	*	.95	3.36	3.75	4.00
3	Boot & Shoe	3	5.83	6.81	6.16	5.78	4.75	5.99
4	Chemical	11	3.58	3.55	4.13	4.48	4.54	4.83
5	Container	4	4.83	5.36	6.06	4.61	4.39	5.02
6	Cosmetic, Drug & Medicine	9(a)	7.78	7.17	7.70	5.49	5.84	6.88
7	Electrical Equipment	4	*	*	.63	3.65	3.77	3.97
8	Food	11	4.66	4.40	4.83	4.52	5.28	5.95
9	Motor Accessory	15	*	.87	3.77	6.73	6.87	8.78
10	Nonferrous Metal	14	*	3.60	4.83	5.63	5.14	5.73
11	Office Equipment	7	2.06	4.01	6.21	5.88	6.50	7.50
12	Public Utility	13	5.29	3.20	6.38	5.71	5.47	6.59
13	Railroad Equipment	8	*	*	*	*	2.07	2.10
14	Rubber	5	*	*	1.10	*	9.83	7.38
15	Steel	7	*	*	*	1.25	5.42	4.47
16	Steam Railroads	23	*	*	*	*	*	*
17	Tobacco	8	8.38	4.32	5.13	4.31	4.82	5.88
18	Average--Classified Companies	163	* B	.96	2.02	2.91	4.38	4.77
19	Unclassified Companies	411				2.04	3.84	4.16
20	Average--All Companies	574				2.42%	4.06%	4.41%

\* Denotes Deficits  
(a) 7 companies in 1932; 8 companies in 1933



RATIOS OF CORPORATE EARNINGS TO  
MARKET VALUES OF COMMON STOCKS

Line No.		Number of Companies	Ratio of Earnings to Low Market Prices				
			1932	1933	1934	1935	1936
	Classified Companies:						
1	Automobile	10	* %	* %	* %	* %	7.20%
2	Building Material	9	*	*	1.36	7.43	5.90
3	Boot & Shoe	3	11.76	14.95	8.39	7.00	6.14
4	Chemical	11	8.60	10.33	5.95	6.78	6.96
5	Container	4	12.08	10.53	7.81	6.84	5.73
6	Cosmetic, Drug & Medicine	9(a)	17.25	12.67	11.65	8.39	7.64
7	Electrical Equipment	4	*	*	1.06	9.88	6.35
8	Food	11	9.77	9.56	6.25	5.90	6.78
9	Motor Accessory	15	*	2.51	7.26	14.00	10.77
10	Nonferrous Metal	14	*	12.29	6.14	6.85	7.89
11	Office Equipment	7	4.86	9.73	9.23	9.32	9.18
12	Public Utility	13	12.56	10.67	10.83	12.21	7.11
13	Railroad Equipment	8	*	*	*	*	4.23
14	Rubber	5	*	*	2.23	*	19.01
15	Steel	7	*	*	*	5.14	9.45
16	Steam Railroads	25	*	*	*	*	*
17	Tobacco	8	17.48	8.21	7.89	5.60	5.56
18	Average--Classified Companies	163	*	2.55	3.22	4.92	6.54
19	Unclassified Companies	411				3.70	6.33
20	Average--All Companies	574				4.23	6.43

\* Denotes Deficits  
(a) 7 companies in 1932; 8 companies in 1936

# CAPITALIZATION OF

## YORK RAILWAYS COMPANY, SUBSIDIARY

DAY & ZIMMERMAN  
ENGINEERS  
NEW YORK PHILADELPHIA

### LEGEND

- Acquisition of Plant and Property
- - - Acquisition of Stocks, Bonds and
- Ownership of Entire Common Stock

Merged and Consolidated under an agreement  
Dated Nov. 9-1907

**YORK AND WESTCHESTER RAILROAD CO.**  
INCORPORATED JULY 5, 1891 - CONSOLIDATED BY PAID.  
(Capitalization as of Date of Merg.)

Common Capital Stock	Per Share
500 Shares @ \$20	\$ 10,000
Reserves for Reconstruction Expenses	500,000
Total Capitalization	\$ 510,000

Merged with York Railways Company Nov. 9, 1907

**THE YORK AND WESTCHESTER RAILROAD CO.**  
INCORPORATED JULY 5, 1891 - CONSOLIDATED BY PAID.  
(Capitalization as of Date of Merg.)

Common Capital Stock	Per Share
500 Shares @ \$20	\$ 10,000
Reserves for Reconstruction Expenses	500,000
Total Capitalization	\$ 510,000

Merged with York Railways Company Nov. 9, 1907

**THE YORK AND WESTCHESTER RAILROAD CO.**  
INCORPORATED JULY 5, 1891 - CONSOLIDATED BY PAID.  
(Capitalization as of Date of Merg.)

Common Capital Stock	Per Share
500 Shares @ \$20	\$ 10,000
Reserves for Reconstruction Expenses	500,000
Total Capitalization	\$ 510,000

Merged with York Railways Company Nov. 9, 1907

AND LACKAWANNA RAILROAD CO.  
INCORPORATED JULY 5, 1891 - CONSOLIDATED BY PAID.

**YORK AND WESTCHESTER RAILROAD CO.**  
INCORPORATED JULY 5, 1891 - CONSOLIDATED BY PAID.  
(Capitalization as of Date of Merg.)

Common Capital Stock		Preferred Stock		Paid-up	
Original Issue	Issued to York and Westchester	Original Issue	Issued to York and Westchester	Original Issue	Issued to York and Westchester
\$ 50,000	\$ 21,250,000	\$ 1,000,000	\$ 1,000,000	\$ 10,000	\$ 27,500,000
Total Capitalization as of Date of Merg. Nov. 9, 1907					

Subscribed Capital Stock and Obligations Applied for the Separate Managers

Capital Stock	Obligations	Capital Stock	Obligations
YORK AND WESTCHESTER RAILROAD CO.	\$ 50,000	YORK AND WESTCHESTER RAILROAD CO.	\$ 10,000
YORK AND WESTCHESTER RAILROAD CO.	\$ 21,250,000	YORK AND WESTCHESTER RAILROAD CO.	\$ 1,000,000
YORK AND WESTCHESTER RAILROAD CO.	\$ 1,000,000	YORK AND WESTCHESTER RAILROAD CO.	\$ 1,000,000
YORK AND WESTCHESTER RAILROAD CO.	\$ 10,000	YORK AND WESTCHESTER RAILROAD CO.	\$ 27,500,000
YORK AND WESTCHESTER RAILROAD CO.	\$ 27,500,000	YORK AND WESTCHESTER RAILROAD CO.	\$ 27,500,000

# CAPITALIZATION CHART OF YORK RAILWAYS COMPANY, SUBSIDIARY AND PREDECESSOR COMPANIES

DAY & ZIMMERMANN, INC.  
ENGINEERS  
NEW YORK PHILADELPHIA CHICAGO

## LEGEND

- Acquisition of Plant and Property through Purchase and/or Merger.
- - - Acquisition of Stocks, Bonds and other Obligations through Purchase and/or Merger.
- Ownership of Entire Common Stocks of Existing Operating Companies.

For amount		
Per cent of total owned	Amount to be paid to shareholders	Amount to be paid to shareholders
100.00	\$ 50,000	\$ 50,000
100.00	100,000	100,000
100.00	150,000	150,000
100.00	200,000	200,000
100.00	250,000	250,000
100.00	300,000	300,000
100.00	350,000	350,000
100.00	400,000	400,000
100.00	450,000	450,000
100.00	500,000	500,000
100.00	550,000	550,000
100.00	600,000	600,000
100.00	650,000	650,000
100.00	700,000	700,000
100.00	750,000	750,000
100.00	800,000	800,000
100.00	850,000	850,000
100.00	900,000	900,000
100.00	950,000	950,000
100.00	1,000,000	1,000,000
100.00	1,050,000	1,050,000
100.00	1,100,000	1,100,000
100.00	1,150,000	1,150,000
100.00	1,200,000	1,200,000
100.00	1,250,000	1,250,000
100.00	1,300,000	1,300,000
100.00	1,350,000	1,350,000
100.00	1,400,000	1,400,000
100.00	1,450,000	1,450,000
100.00	1,500,000	1,500,000
100.00	1,550,000	1,550,000
100.00	1,600,000	1,600,000
100.00	1,650,000	1,650,000
100.00	1,700,000	1,700,000
100.00	1,750,000	1,750,000
100.00	1,800,000	1,800,000
100.00	1,850,000	1,850,000
100.00	1,900,000	1,900,000
100.00	1,950,000	1,950,000
100.00	2,000,000	2,000,000
100.00	2,050,000	2,050,000
100.00	2,100,000	2,100,000
100.00	2,150,000	2,150,000
100.00	2,200,000	2,200,000
100.00	2,250,000	2,250,000
100.00	2,300,000	2,300,000
100.00	2,350,000	2,350,000
100.00	2,400,000	2,400,000
100.00	2,450,000	2,450,000
100.00	2,500,000	2,500,000
100.00	2,550,000	2,550,000
100.00	2,600,000	2,600,000
100.00	2,650,000	2,650,000
100.00	2,700,000	2,700,000
100.00	2,750,000	2,750,000
100.00	2,800,000	2,800,000
100.00	2,850,000	2,850,000
100.00	2,900,000	2,900,000
100.00	2,950,000	2,950,000
100.00	3,000,000	3,000,000
100.00	3,050,000	3,050,000
100.00	3,100,000	3,100,000
100.00	3,150,000	3,150,000
100.00	3,200,000	3,200,000
100.00	3,250,000	3,250,000
100.00	3,300,000	3,300,000
100.00	3,350,000	3,350,000
100.00	3,400,000	3,400,000
100.00	3,450,000	3,450,000
100.00	3,500,000	3,500,000
100.00	3,550,000	3,550,000
100.00	3,600,000	3,600,000
100.00	3,650,000	3,650,000
100.00	3,700,000	3,700,000
100.00	3,750,000	3,750,000
100.00	3,800,000	3,800,000
100.00	3,850,000	3,850,000
100.00	3,900,000	3,900,000
100.00	3,950,000	3,950,000
100.00	4,000,000	4,000,000
100.00	4,050,000	4,050,000
100.00	4,100,000	4,100,000
100.00	4,150,000	4,150,000
100.00	4,200,000	4,200,000
100.00	4,250,000	4,250,000
100.00	4,300,000	4,300,000
100.00	4,350,000	4,350,000
100.00	4,400,000	4,400,000
100.00	4,450,000	4,450,000
100.00	4,500,000	4,500,000
100.00	4,550,000	4,550,000
100.00	4,600,000	4,600,000
100.00	4,650,000	4,650,000
100.00	4,700,000	4,700,000
100.00	4,750,000	4,750,000
100.00	4,800,000	4,800,000
100.00	4,850,000	4,850,000
100.00	4,900,000	4,900,000
100.00	4,950,000	4,950,000
100.00	5,000,000	5,000,000



SELLER AND YOUR AGENT HEREBY CERTIFY WHEREAS THE SELLER IS THE OWNER OF THE (Specify location as of date of Sale -)	
Gross Regd. Value Net Sales @ 1.5% Mortgage and Construction Advances Total Disbursement	Net Amount \$ 50,000 100,000 50,000
Signed by the Seller and Agent Company Ltd., on 1997	

THE UNITED STATES CUSTOMS SERVICE	
IMPORTED JUL 5, 1964 - CONTINUATION OF FORM	
Registration of Sale of Goods	
Series Exported Goods	Per
300 Boxes & 250	\$ of, 000
Wholesale for Transportation Address	100.00
Total Registered Goods	\$ 100.00
Export with Your Sales Tax Company No. 1007	

THE FIRST AND SECOND DEPOSIT RECEIPT ON.	
NUMBERED 100 5, 199 - DEPOSITED BY THE	
(REGISTERED ON 10 OF 100 OF 100)	
1000 100 100 100	100 100
100 100 100 100	100 100
1000 100 100 100	

AND LINES AND TERMINAL STREET RAILWAY CO.	
Issued Monthly JULY 5, 1921 - COMMUNICATIONS OF THE (Registration as of Date of Receipt)	
Amount Capital Stock 100 Shares @ \$50	For Dividend \$ 5,000
Subscription for Communications Addressed To the Capitalization	\$ 27,125
Bought with New Exchange Company Nov. 5, 1921	

NAME AND ADDRESS OF THE COMPANY OR INCORPORATED FEB 22, 1955 - MEMPHIS, TN OF FIVE (Registered as of State of Georgia)	
Gross Capital Stock 2,500 Shares @ \$20 Authorized for Distribution of Dividend Net Capitalization	Paid 0 - 250.00 25.00 0 - 250.00
Changes in the State of Georgia Company No. 2, 1957	

TOWN STREET RAILWAY COMPANY	
Incorporated November 12, 1890 - CORPORATION OF MINNESOTA (Incorporated on 27 <sup>th</sup> day of August)	
Amount Capital Stock	Per Share
5,000 Shares @ \$25	\$ 125,000
Dividends for Shareholders' Accounts	100,000
Total Capital Stock	\$ 225,000
August 1910: Total Building Company No. 3, 1907	

[illegible]

Re-opening Railway Operation Approved From The General Managers to Re-openers with an agreement with agreement to add that the Railway Co. dated July 1, 1907		Gross Capital \$100,000,000 July 1, 1907	
Name of Company	Interest Return Div. 1, 1907	Net Profit Net Profit Net Profit	
and Western Railway Co. and Western Railway Co.	Div. 1, 1907	100 0 00 100 0 00 100 0 00	

[illegible][illegible]

Pranchise Companies Merged with Columbia Light and Power Company, Inc. 3 Under Agreement of Consolidation and Transfer Dated June 1, 1927			Stock Capital Authorized
Name of Company	Category of Plant (Source)	Production Capacity	Actual Paid Up at June 1, 1927
Lower Merion Pwr. Light. Plant Lower Merion Light. Plant and Pawnee Pwr. Co.	Small, 1913	Twenty of 1000 Kilowatt	\$ 500,000
Johnson Pwr. Light. Plant and Pawnee Electric		Twenty of 1000 Kilowatt	\$ 500,000
Midland Pwr. Light. Plant and Pawnee Electric		Twenty of 1000 Kilowatt	\$ 500,000
Midland Pwr. Light. Plant and Pawnee Electric		Twenty of 1000 Kilowatt	\$ 500,000
Midland Pwr. Light. Plant and Pawnee Electric		Twenty of 1000 Kilowatt	\$ 500,000
<b>Total</b>			<b>\$2,500,000</b>

[illegible]

WALK LIGHT, LIGHT AND POWER TRUST		
INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK MAY 25, 1936		
(Incorporation at the time the Capital Stock of this Company was acquired by Highville Light Power Selling Company in connection with its liquidation dated MAY 25, 1937)		
	PAID UP AND PAID IN CAPITAL STOCK	RESERVE
Incorporation as of July 1, 1936		\$ 0.00
Issued for 25,000 Shares of Walk Electric Light Company and 5,000 1/8 Shares of the Washington Electric Light and Power Co.	\$ 750,000	\$ 250,000
Second Subsequent to July 1, 1936		
The Payment of Debt of Washington and the Other Subsequent Payments		10,000
Incorporation as of Nov. 30, 1937	\$ 750,000	\$ 260,000

[illegible]

Merged and Consolidated under a  
Dated June 28-1915

Merged and Consolidated and  
Dated May 3-12



[illegible]



**DAY & ZIMMERMANN, INC.**  
ENGINEERS  
NEW YORK PHILADELPHIA CHICAGO

Name		Age	Sex	Birth Date	Birth Place	Marital Status	Occupation	Education	Religion	Political Party	Other
1	John Doe	25	M	1915	USA	Single	Teacher	High School	Protestant	Democrat	
2	Jane Doe	22	F	1918	USA	Single	Student	High School	Catholic	Democrat	
3	John Doe	30	M	1910	USA	Married	Engineer	College	Protestant	Democrat	
4	Jane Doe	28	F	1912	USA	Married	Homemaker	College	Catholic	Democrat	
5	John Doe	35	M	1905	USA	Married	Manager	College	Protestant	Democrat	
6	Jane Doe	32	F	1908	USA	Married	Homemaker	College	Catholic	Democrat	

[illegible]

Acquired by Deed  
Dated Feb. 8-1894

THE PHOTOGRAPHIC SERVICE LIGHT, HEAT AND POWER COMPANY OF MOBILE, FL.  
 INCORPORATED UNDER THE LAWS OF THE COMMONWEALTH OF FLORIDA  
 LICENSE NUMBER ISSUED FEB. 14, 1934  
 (Registration as of State of Registration by  
 the Illinois Electric Light Company of Springfield, Mo.)

General Electric: Street	Per Month Metered Light
1,500-1/2 Street x 930 Per Police Unit	\$ 26.00

<p>THE PHILIPS ELECTRIC LIGHT COMPANY OF YORK, PA.</p> <p>INCORPORATED UNDER THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA</p> <p>LETTERS PATENT GRANTED MAY 3, 1906</p> <p>(Registered on the Date of Application by Philips Electric Light Company of York, Pa.)</p>	
Common Capital Stock	Par Value
10,000 Shares at \$1 per share each	\$ 10,000

<p>THIS AND VARIOUS SUBSIDIARY LIST HEREIN          FORMED BY AN AGREEMENT OF CONSOLIDATION AND MERGER UNDER THE LAW OF THE          COMMONWEALTH OF MASSACHUSETTS, BEING PART OF THE SECOND ARTICLE 1, 1905          (Registration as of May 15, 1951)</p>	
Common Capital Stock	Par Amount Outstanding
One Share at \$50 Par Value each	\$ 50.00
Preferred Stock	
At Par	\$5.00
Total Capitalization as of May 15, 1951	\$ 55.00

Merged and Consolidated under an agreement  
Dated March 15-1905

<p>RED LION ELECTRIC LIGHT COMPANY          INCORPORATED UNDER THE LAWS OF THE COMMONWEALTH OF MASS.          LEADING STREET BOSTON MAY 19, 1904          Registration on 26 March 17, 1907</p>	
<p>Common Capital Stock          \$1,000,000 + \$750</p>	<p>Per Share          \$ 8.100</p>

Phoenix & Quartz Springs cells built and Standard Electric Light Company under contract of Installation and Standard Electric Light Co.	Current Status 1. 1000000 2. 1000000 3. 1000000
Name of Company Standard Electric Light Co. Standard Electric Light Co. Standard Electric Light Co.	Latest Report Date: 10/10/1918 Date: 10/10/1918 Date: 10/10/1918
Location of Property Phoenix, Arizona Phoenix, Arizona Phoenix, Arizona	Date of Report Date: 10/10/1918 Date: 10/10/1918 Date: 10/10/1918
Title	Date of Report

1198-1211

EDISON LIGHT AND POWER COMPANY  
1936 INCREMENT COST OF SERVICE TO  
YORK RY. CO. AND PROFIT TO EDISON LIGHT & POWER CO.

	<u>KWH</u> <u>(1)</u>	<u>Total</u> <u>Cost</u> <u>(2)</u>	<u>Cost Per</u> <u>KWH</u> <u>(3)</u>	<u>Total</u> <u>Profit</u> <u>(4)</u>
1 1936 Power Used by York Ry. Co.	4,232,300	\$ 38,091	\$ .00900	
2 1936 Total Power Purchased by Respondent*	71,151,000	548,244	.00771	
3 Purchased Power Without Ry. Load	66,918,700	522,435	.00781	
4 Increment Cost-York Ry. Load	4,232,300	25,803	.00610	
5 Gross Profit on Sales to York Railway Co. Col. (2) Line 1 minus Line 4		12,282		
6 Maintenance Cost Conversion Equipment-Average of 1935 and 1936 Costs		615		
7 Net Profit on Power Sales to York Railway Company		\$ 11,667		\$11,667

\*Exclusive of Glatfelter and Miscellaneous Customers

VALUE TO EDISON LIGHT AND POWER COMPANY  
OF CORRECTIVE EFFECT OF RAILWAY LOAD ON SYSTEM POWER FACTOR IN 1936

	<u>(5)</u>
8 Total Purchased and Generated 1936	75,976,100 kwh
9 York Railway load supplied at Central Plant (at 98% leading power factor)	3,301,900 "
10 Total Purchased and Generated, exclusive of York Railway load at Central Plant (This load is at 67% lagging power factor)	71,774,200 "
11 Portion of load corrected to 80% lagging power factor by Railway load	8,678,100 "
12 Remaining load, the power factor of which is corrected by condensers	63,096,100 "
13 Total annual Cost of power factor correction by condensers	\$ 18,025.00
14 Cost per kwh of power factor correction $18,025 \div 63,096,100$	\$ .0002857
15 Credit to Railway load for correction $8,678,100 \times .0002857$	\$ 2,479
16 Credit to Railway load due to requiring no correction $3,301,900 \times .0002857$	

	(1)	(2)	(3)	(4)
1 1936 Power Used by York Ry. Co.	4,232,300	\$ 38,091	\$ .00900	
2 1936 Total Power Purchased by Respondent*	71,151,000	548,244	.00771	
3 Purchased Power Without Ry. Load	66,918,700	522,435	.00781	
4 Increment Cost-York Ry. Load	4,232,300	25,809	.00610	
5 Gross Profit on Sales to York Railway Co. Col. (2) Line 1 minus Line 4		12,282		
6 Maintenance Cost Conversion Equipment-Average of 1935 and 1936 Costs		615		
7 Net Profit on Power Sales to York Railway Company		\$ 11,667	\$ 11,667	
*Exclusive of Glatfelter and Miscellaneous Customers				

VALUE TO EDISON LIGHT AND POWER COMPANY  
OF CORRECTIVE EFFECT OF RAILWAY LOAD ON SYSTEM POWER FACTOR IN 1936

	(5)	
8 Total Purchased and Generated 1936	75,076,100 kwh	
9 York Railway load supplied at Central Plant (at 90% leading power factor)	3,301,900 "	
10 Total Purchased and Generated, exclusive of York Railway load at Central Plant (This load is at 67% lagging power factor)	71,774,200 "	
11 Portion of load corrected to 80% lagging power factor by Railway load	8,678,100 "	
12 Remaining load, the power factor of which is corrected by condensers	63,096,100 "	
13 Total annual Cost of power factor correction by condensers	\$ 18,025.00	
14 Cost per kwh of power factor correction $18,025 \div 63,096,100$	\$ .0002857	
15 Credit to Railway load for correction $8,678,100 \times .0002857$	\$ 2,479	
16 Credit to Railway load due to requiring no correction $3,301,900 \times .0002857$	943	
17 Total Credit	\$ 3,422	\$ 3,422
18 Total		\$ 15,089

**EDISON LIGHT AND POWER COMPANY**  
**STATEMENT SHOWING THE DERIVATION OF THE COST AND PROFIT ARISING FROM THE SALE OF**  
**POWER SUPPLIED TO THE YORK RAILWAYS COMPANY**  
**DURING THE YEAR ENDED DECEMBER 31, 1936**

Line No.	Demand			Demand Charge			Energy			Energy Charge			Total Energy Charge	Total Charge Without St. Ry. Load
	Purchased KW (1)	Railway KW Coincident (2)	Purchased Less: Ry. KW (3)	First 5,000 KW @ \$1.25 (4)	Over 5,000 KW @ \$1.00 (5)	Total Demand Charge With- out Ry. (6)	Purchased KWH (7)	Railway KWH (8)	Purchased Less Ry KWH (9)	100 Hrs of Demand @ \$.006 (10)	2,500,000 KWH @ \$.005 (11)	Balance KWH @ \$.004 (12)	(13)	(14)
1 January	13,300	750	12,550	\$ 6,250	\$ 7,550	\$ 13,800	5,385,000	382,080	5,002,920	\$ 7,530	\$ 12,500	\$ 4,992	\$ 25,022	\$ 38,822
2 February	12,600	850	11,750	6,250	6,750	13,000	4,805,000	475,700	4,329,300	7,050	12,500	2,617	22,167	35,167
3 March	13,900	550	13,350	6,250	8,350	14,600	5,257,000	364,910	4,892,090	8,010	12,500	4,228	24,738	39,336
4 April	14,000	650	13,350	6,250	8,350	14,600	5,292,000	338,560	4,953,440	8,010	12,500	4,474	24,984	39,584
5 May	15,300	450	14,850	6,250	9,850	16,100	5,696,000	315,970	5,380,030	8,910	12,500	5,580	26,090	43,090
6 June	15,200	450	14,750	6,250	9,750	16,000	5,858,000	249,510	5,608,490	8,850	12,500	6,534	27,884	43,884
7 July	15,900	450	15,450	6,250	10,450	16,700	6,210,000	359,010	5,850,990	9,270	12,500	7,224	28,994	45,694
8 August	16,500	450	16,050	6,250	11,050	17,300	6,490,000	309,030	6,180,970	9,530	12,500	8,304	30,434	47,734
9 September	16,500	650	15,850	6,250	10,850	17,100	6,536,000	305,820	6,230,180	9,110	12,500	8,581	30,591	47,691
10 October	16,300	650	15,650	6,250	10,650	16,900	6,678,000	351,700	6,526,300	9,390	12,500	9,845	31,735	48,635
11 November	16,700	750	15,950	6,250	10,950	17,200	6,190,000	367,420	5,822,580	9,570	12,500	6,910	28,980	46,180
12 December	16,000	750	15,250	6,250	10,250	16,500	6,554,000	412,590	6,141,410	9,150	12,500	8,466	30,116	46,616
Total	182,200	7,400	174,800	\$ 75,000	\$ 114,800	\$ 189,800	71,151,000	4,232,300	66,918,700	\$ 164,880	\$ 150,000	\$ 77,755	\$ 332,635	\$ 522,435

\*Does not include Gladfelter and Miscellaneous Customers



**EDISON LIGHT AND POWER COMPANY**  
**STATEMENT SHOWING THE DERIVATION OF THE COST AND PROFIT ARISING FROM THE SALE OF**  
**POWER SUPPLIED TO THE YORK RAILWAYS COMPANY**  
**DURING THE YEAR ENDED DECEMBER 31, 1936**

Demand Charge			Energy			Energy Charge				Determination of the Resulting Cost and Profit of Power Used for Railway Purposes				
1,000 Over 5,000 KWH @ \$1.00 (4)	Total Demand Charge With- out Ry. (5)	Purchased KWH (7)	Railway KWH (8)	Purchased Less Ry KWH (9)	100 Hrs of Demand @ \$.006 (10)	2,500,000 KWH @ \$.005 (11)	Balance KWH @ \$.004 (12)	Total Energy Charge (13)	Total Charge Without St.Ry. Load (14)	Total Charge Including Railway Load* (15)	Increment Cost of the Railway Power (16)	Actual Revenue Received For Railway Power (17)	Actual Profit Received For Railway Power (18)	
0,250	\$ 7,550	\$ 13,800	5,385,000	382,080	5,002,920	\$ 7,530	\$ 12,500	\$ 4,992	\$ 25,022	\$ 38,822	\$ 41,250	\$ 2,428	\$ 3,439	\$ 1,011
0,250	6,750	13,000	4,805,000	475,700	4,329,300	7,050	12,500	2,617	22,167	35,167	36,090	2,923	4,261	1,358
0,250	8,350	14,600	5,257,000	364,910	4,892,090	8,010	12,500	4,226	24,736	39,336	41,456	2,120	3,284	1,164
0,250	8,350	14,600	5,292,000	338,560	4,953,440	8,010	12,500	4,474	24,984	39,584	41,718	2,134	3,047	913
0,250	9,850	16,100	5,646,000	315,970	5,380,030	8,910	12,500	5,580	26,090	43,090	44,894	1,804	2,844	1,046
0,250	9,750	16,000	5,858,000	249,510	5,608,490	8,850	12,500	6,534	27,884	43,884	45,422	1,538	2,246	708
0,250	10,450	16,700	6,210,000	359,010	5,850,990	9,270	12,500	7,224	28,994	45,694	47,670	1,976	3,231	1,255
0,250	11,050	17,300	6,490,000	309,030	6,180,970	9,630	12,500	8,304	30,434	47,734	49,510	1,776	2,781	1,005
0,250	10,850	17,100	6,536,000	305,820	6,230,180	9,510	12,500	8,581	30,591	47,691	49,694	2,003	2,753	750
0,250	10,650	16,900	6,676,000	351,700	6,526,300	9,390	12,500	9,845	31,735	48,635	50,822	2,187	3,165	978
0,250	10,950	17,200	6,190,000	367,420	5,822,580	9,570	12,500	6,916	28,980	46,180	48,550	2,370	3,307	927
0,250	10,250	16,500	6,554,000	412,590	6,141,410	9,150	12,500	8,466	30,116	46,616	49,166	2,550	3,713	1,163
5,000	\$ 114,800	\$ 189,800	71,151,000	4,272,300	66,918,700	\$ 104,880	\$ 150,000	\$ 77,755	\$ 332,635	\$ 522,435	\$ 548,244	\$ 25,809	\$ 38,091	\$ 12,262

**WELLS LIGHT AND POWER COMPANY**  
**SUMMARY OF REPRODUCTION COST ESTIMATES**  
**FOR THE PERIOD BEGINNING JANUARY 1, 1934**  
**AND ENDING AT THE PUBLIC SERVICE**

Exhibit No. **9**  
Page 1 of 6

Asset No.	Description	Total Reproduction Cost All Property	Property Not Used or Useful in The Public Service	Estimated Reproduction Cost Not Useful Property	Estimated Reproduction Cost Not Useful Property
		117	127	137	147
<b>Undistributed Fixed Capital</b>					
200	Organization	60,812	866	613	67,333
<b>Power Generating System</b>					
204	Land	221,137	-	-	221,137
207	Structures	221,137	-	-	221,137
208	Boiler Plant Equipment	333,451	-	-	333,451
210	Steam Engines and Turbines	15,957	-	-	15,957
211	Turbo Generators	16,123	-	-	16,123
212	Other Electric Generators	1,600	-	-	1,600
213	Coal Storage and Handling Equipment	10,510	-	-	10,510
215	Other Power Plant Equipment	-	-	-	-
<b>Transmission System</b>					
217	Land	11,251	-	-	11,251
219	Rights of Way	11,251	-	-	11,251
220	Transmission System Structures	11,251	-	-	11,251
221	Substation Equipment	11,251	-	-	11,251
222	Poles and Picturcs	11,251	-	-	11,251
223	Overhead Conductors	11,251	-	-	11,251
224	Overhead Telephone System	11,251	-	-	11,251
225	Underground Conductors	11,251	-	-	11,251
<b>Distribution System</b>					
226	Rights of Way	11,251	-	-	11,251
227	Poles and Picturcs	11,251	-	-	11,251
228	Overhead Conductors	11,251	-	-	11,251
229	Overhead Transformer Installations	11,251	-	-	11,251
230	Overhead Services	11,251	-	-	11,251
231	Underground Conductors	11,251	-	-	11,251
232	Underground Transformer Installations	11,251	-	-	11,251
<b>Utilization System</b>					
233	Municipal Street Incandescent System	221,137	-	-	221,137
234	Other Utilization Equipment	221,137	-	-	221,137
<b>General Property</b>					
235	General Office Land	11,251	-	-	11,251
236	General Office Structures	11,251	-	-	11,251
237	General Office Equipment	11,251	-	-	11,251
238	General Shop Equipment	11,251	-	-	11,251
239	General Garage Equipment	11,251	-	-	11,251
240	General Laboratory Equipment	11,251	-	-	11,251
241	General Tools and Implements	11,251	-	-	11,251
<b>Undistributed Construction Expenditures</b>					
242	Engineering and Superintendence During Construction	2,408	-	-	2,408
243	General Office's and Clerk's Expenses During Construction	433	-	-	433
244	General Office's and Clerk's Expenses During Construction	144	-	-	144
245	Law Expenses During Construction	208	-	-	208
246	Injuries and Damages During Construction	208	-	-	208
247	Insurance During Construction	208	-	-	208
248	Taxes During Construction	208	-	-	208
249	Interest During Construction	2,408	-	-	2,408
250	Discount and Expense (Cost of Financing)	1,726	-	-	1,726
<b>Total Reproduction Cost (Exclusive of Working Capital and Going Concern Value)</b>					
		85,698,494	873,673	850,687	86,950,609



# REPRODUCTION COSTS OF THE PUBLIC SERVICE

Asset No.	Description	Total Reproduction Cost All Property (1)	Property Not Used or Useful in The Public Service (2)	Adjustments (3)	Estimated Reproduction Cost Not Useful Property (4) (5)	
<b>Undistributed Fixed Capital</b>						
200	Organization	\$ 68,612	\$ 866	\$ 613	\$ 67,333	\$ 67,333
<b>Power Generating System</b>						
204	Land	22,137	-	-	22,137	22,137
207	Structures	221,888	-	-	221,888	221,888
208	Railroad Rights and Trestles	358,558	-	-	358,558	358,558
209	Boiler Plant Equipment	128,552	5,889	-	134,441	134,441
210	Steam Engines and Turbines	128,552	31,957	-	160,509	160,509
211	Turbo Generators	128,552	-	-	128,552	128,552
212	Other Electric Generators	128,552	16,323	27,070	171,945	171,945
213	Other Electric Equipment	271,228	3,888	1,680	276,796	276,796
214	Coal Storage and Weighing Equipment	10,510	-	-	10,510	10,510
215	Other Power Plant Equipment	10,510	-	-	10,510	10,510
<b>Transmission System</b>						
217	Land	11,885	-	-	11,885	11,885
219	Rights of Way	1,885	-	-	1,885	1,885
224	Transmission System Structures	22,137	-	-	22,137	22,137
221	Substation Equipment	128,552	-	-	128,552	128,552
222	Lines and Poles	128,552	-	-	128,552	128,552
223	Overhead Conductors	128,552	-	11,531	140,083	140,083
224	Overhead Telephone System	128,552	-	-	128,552	128,552
225	Underground Conductors	128,552	-	-	128,552	128,552
226	Underground Equipment	128,552	-	-	128,552	128,552
<b>Distribution System</b>						
229	Rights of Way	128,552	-	-	128,552	128,552
232	Lines and Poles	128,552	-	-	128,552	128,552
233	Overhead Conductors	128,552	-	-	128,552	128,552
234	Overhead Transformers	128,552	-	-	128,552	128,552
235	Overhead Transformer Installations	128,552	-	-	128,552	128,552
236	Overhead Services	128,552	-	-	128,552	128,552
237	Underground Conductors	128,552	-	-	128,552	128,552
238	Underground Equipment	128,552	-	-	128,552	128,552
239	Meters	128,552	-	-	128,552	128,552
240	Meter Installations	128,552	-	-	128,552	128,552
<b>Utilization System</b>						
243	Municipal Street Improvement System	246,118	-	-	246,118	246,118
244	Other Utilization Equipment	246,118	-	-	246,118	246,118
<b>General Property</b>						
247	General Office Land	113,625	-	-	113,625	113,625
248	Other General Land	27,350	-	-	27,350	27,350
249	General Office Structures	110,405	-	-	110,405	110,405
250	Other General Structures	62,578	-	-	62,578	62,578
251	General Office Equipment	57,724	-	-	57,724	57,724
252	General Store Equipment	8,425	-	-	8,425	8,425
253	General Shop Equipment	8,425	-	-	8,425	8,425
254	General Garage Equipment	21,063	729	-	21,792	21,792
255	General Laboratory Equipment	21,063	-	-	21,063	21,063
256	General Tools and Implements	8,425	-	-	8,425	8,425
<b>Undistributed Construction Expenditures</b>						
258	Engineering and Superintendence During Construction	206,436	2,598	1,877	209,911	209,911
259	General Officer's and Clerk's Salaries During Construction	84,075	1,000	1,000	86,075	86,075
260	General Officer's and Clerk's Expenses During Construction	34,806	415	306	35,527	35,527
261	Office Supplies and Expenses During Construction	11,669	144	102	11,915	11,915
262	Law Expenses During Construction	22,337	268	204	22,809	22,809
263	Injuries and Damages During Construction	22,337	268	204	22,809	22,809
264	Insurance During Construction	22,337	268	204	22,809	22,809
265	Taxes During Construction	22,337	268	204	22,809	22,809
266	Interest During Construction	22,337	268	204	22,809	22,809
267	Discount and Expense (part of Financing)	22,337	268	204	22,809	22,809
<b>Total Reproduction Cost (Exclusive of Working Capital and Going Concern Value)</b>						
		\$5,698,494	\$ 71,673	\$ 50,687	\$ 5,572,134	\$ 5,572,134

Note:  
Amounts shown in columns (2) and (3) are deductions from amounts shown in column (1). The items comprising the amounts included in columns (2) and (3) for direct costs, are shown on the supporting schedules attached hereto.

[fol. 1220] **RESPONDENTS' EXHIBIT 9, SHEET 1**  
**Edison Light and Power Company**  
**Summary of Original Cost Estimates**  
**Property as it Existed November 30, 1936**

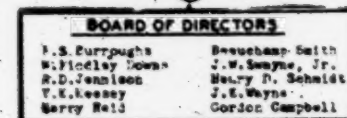
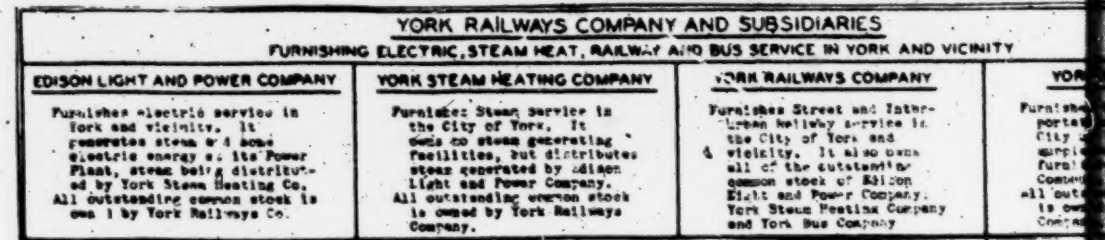
Acct. No.	Description	Estimated Original Cost
	Undistributed Fixed Capital:	
200	Organization.....	\$62,472
	Steam Generating System:	
204	Land.....	29,224
207	Structures.....	111,644
209	Boiler Plant Equipment.....	195,457
210	Steam Engines and Turbines.....	48,490
211	Turbo Generators.....	88,014
212	Other Electric Generators.....	101,685
213	Other Electric Equipment.....	255,697
214	Coal Storage and Weighing Equipment.....	12,681
215	Other Power Plant Equipment.....	7,131
	Transmission System:	
237	Land.....	12,672
239	Rights of Way.....	2,708
240	Transmission System Structures.....	20,843
241	Substation Equipment.....	415,256
242	Poles and Fixtures.....	102,425
243	Overhead Conductors.....	127,268
244	Overhead Telephone System.....	549
245	Underground Conduits.....	21,006
246	Underground Conductors.....	8,711
	Distribution System:	
254	Rights of Way.....	846
256	Poles and Fixtures.....	598,739
257	Overhead Conductors.....	504,634
258	Overhead Transformers.....	394,091
259	Overhead Transformer Installations.....	16,537
260	Overhead Services.....	156,837
262	Underground Conductors.....	7,025
266	Meters.....	292,681
267	Meter Installations.....	34,065
	Utilization System:	
273	Municipal Street Incandescent System.....	216,014
274	Other Utilization Equipment.....	43,277
	General Property:	
275	General Office Land.....	50,490
276	Other General Land.....	20,004
278	General Office Structures.....	93,724

## Respondents' Exhibit 9, Sheet 1—Continued

Acct. No.	Description	Estimated Original Cost
General Property:—Continued		
279	Other General Structures .....	24,121
280	General Office Equipment .....	55,000
281	General Store Equipment .....	3,376
282	General Shop Equipment .....	5,523
284	General Garage Equipment .....	61,662
285	General Laboratory Equipment .....	20,449
286	General Tools and Implements .....	4,213
[fols. 1221-1224]		
Undistributed Construction Expenditures:		
288	Engineering and Superintendence During Construction .....	124,943
289	General Officer's and Clerk's Salaries During Construction .....	41,648
290	General Officer's and Clerk's Expenses During Construction .....	31,236
291	Office Supplies and Expenses During Construction .....	10,412
292	Law Expenditures During Construction .....	20,824
293	Injuries and Damages During Construction .....	41,648
294	Insurance During Construction .....	10,412
295	Taxes During Construction .....	20,824
296	Interest During Construction .....	135,876
...	Discount and Expense (Cost of Financing) .....	349,880
Total Original Cost .....		<u>\$5,014,944</u>

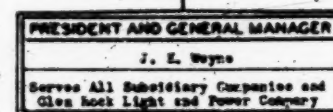
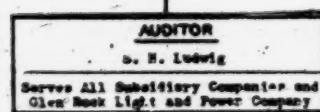
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**ADMINISTRATIVE OFFICERS**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		Total
		Salaries	Insurance	
Edison Light & Power	73.2	\$ 21,000	\$ 595	\$ 21,595
York Steam Heat	4.4	2,800	80	2,880
York Railways	10.0	2,800	80	2,880
York Bus	2.9	1,800	50	1,850
<b>Sub-Total</b>	<b>90.5</b>	<b>\$ 28,400</b>	<b>\$ 705</b>	<b>\$ 29,105</b>
Glen Rock L. & P.	9.5	1,800	50	1,850
<b>Total</b>	<b>100.0</b>	<b>\$ 30,200</b>	<b>\$ 755</b>	<b>\$ 30,955</b>



**GENERAL OFFICE CLERKS  
(ACCOUNTING DEPARTMENT)**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		Total
		Salaries	Insurance	
Edison Light & Power	73.2	\$ 15,866	\$ 605	\$ 16,471
York Steam Heat	4.4	1,152	46	1,198
York Railways	10.0	2,682	102	2,784
York Bus	2.9	656	24	680
<b>Sub-Total</b>	<b>90.5</b>	<b>\$ 20,356</b>	<b>\$ 777</b>	<b>\$ 21,133</b>
Glen Rock L. & P.	9.5	1,152	50	1,202
<b>Total</b>	<b>100.0</b>	<b>\$ 21,508</b>	<b>\$ 827</b>	<b>\$ 22,335</b>

Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Assistant Auditor	\$ 3,300
1	Accountant	2,400
1	Statistician	1,800
1	Bookkeeper	1,020
1	Voucher Clerk	2,640
2	Time Clerks	1,840
1	Payroll Clerk	1,260
1	General Accounting Clerk	1,020
1	Associate Receivable Bookkeeper	1,020

**SUPERINTENDENCE OF POWER AND TRANSMISSION**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		Total
		Salaries	Insurance	
Edison Light & Power	21.3	\$ 5,466	\$ 213	\$ 5,679
York Steam Heat	13.3	913	15	928
York Railways	2.5	171	5	176
York Bus	-	-	-	-
<b>Sub-Total</b>	<b>37.1</b>	<b>6,550</b>	<b>\$ 233</b>	<b>\$ 6,783</b>
Glen Rock L. & P.	2.9	200	7	207
<b>Total</b>	<b>100.0</b>	<b>\$ 6,750</b>	<b>\$ 240</b>	<b>\$ 6,990</b>

Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent and Asst. Safety Engineer	\$ 4,800
1	Clerk	1,597
1	Typist	183
<b>Total</b>	<b>Total Joint Power and Transmission Employees</b>	<b>\$ 6,580</b>

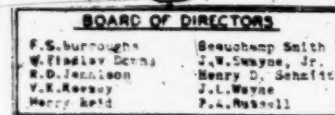
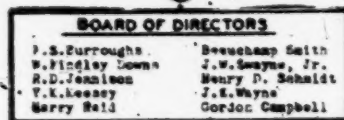
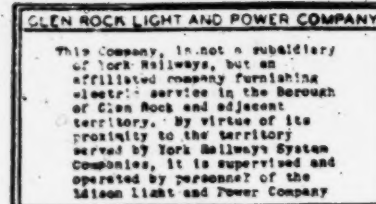
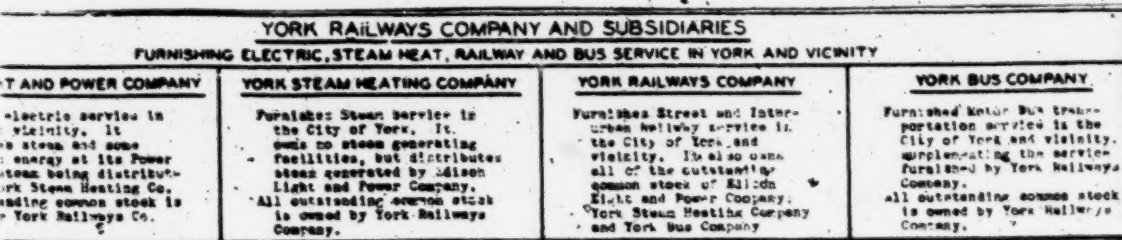
**SUPERINTENDENCE OF DISTRIBUTION**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		Total
		Salaries	Insurance	
Edison Light & Power	81.7	\$ 13,653	\$ 519	\$ 14,172
York Steam Heat	-	-	-	-
York Railways	-	-	-	-
York Bus	-	-	-	-
<b>Sub-Total</b>	<b>81.7</b>	<b>\$ 13,653</b>	<b>\$ 519</b>	<b>\$ 14,172</b>
Glen Rock L. & P.	18.3	1,152	119	1,271
<b>Total</b>	<b>100.0</b>	<b>\$ 14,805</b>	<b>\$ 638</b>	<b>\$ 15,443</b>

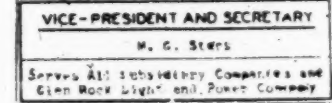
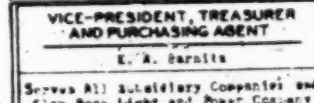
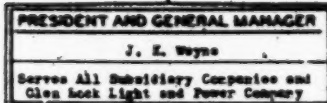
Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent of Distribution	\$ 4,800
1	Dist. Dept. Engineer	3,600
2	Dist. Dept. Clerks	2,142
1	Dist. Dept. Typist	1,065
1	Superintendent of Meter Dept.	1,188
<b>Total</b>	<b>Total Joint Dist. Employees</b>	<b>\$ 12,795</b>



**ADMINISTRATIVE OFFICERS**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		
		Salaries	Insurance	Total
Edison Light & Power	75.0	\$ 21,000	\$ 395	\$ 21,395
York Steam Heat	5.0	1,500	50	1,550
York Railways	10.0	2,800	80	2,880
York Bus	5.0	1,500	75	1,575
Sub-Total	95.0	26,800	720	27,520
Glen Rock L. & P.	5.0	1,500	75	1,575
Total	100.0	\$ 28,300	\$ 795	\$ 29,095



**EDISON**

Total	\$ 5,800
Annual Salaries	\$ 4,800
Insurance	1,000
Total	\$ 5,800

**SUPERINTENDENCE OF DISTRIBUTION**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		
		Salaries	Insurance	Total
Edison Light & Power	81.3	\$ 13,553	\$ 319	\$ 13,872
York Steam Heat	1.3	2,000	50	2,050
York Railways	10.4	2,800	80	2,880
York Bus	5.2	1,500	75	1,575
Sub-Total	98.2	19,853	424	20,277
Glen Rock L. & P.	1.8	2,750	119	2,869
Total	100.0	\$ 22,603	\$ 543	\$ 23,146

Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent of Distribution	\$ 4,800
1	Dist. Dept. Engineer	3,600
2	Dist. Dept. Clerks	6,192
1	Dist. Dept. Typist	1,055
1	Superintendent of Meter Dept.	3,140
6	Total Joint Dist. Employees	\$ 18,787

**ASSISTANT PURCHASING AGENT AND STORES DEPARTMENT**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		
		Salaries	Insurance	Total
Edison Light & Power	70.0	\$ 3,045	\$ 150	\$ 3,195
York Steam Heat	1.3	72	5	77
York Railways	10.4	925	35	960
York Bus	8.2	240	15	255
Sub-Total	90.0	5,182	195	5,377
Glen Rock L. & P.	10.0	1,500	75	1,575
Total	100.0	\$ 6,682	\$ 270	\$ 6,952

Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Asst. Purchasing Agent	\$ 2,160
1	Stenographer	1,140
3	Stores Clerks	4,340
5	Total Joint Stores Salaries	7,640
	Less: Portion Charged to Merchandise Jobbing Clearing Account	-2,100

**COMMERCIAL DEPARTMENT**  
Distribution of Salaries and Insurance

Joint Utilities	Per Cent of Total	Annual		
		Salaries	Insurance	Total
Edison Light & Power	94.4	\$ 18,030	\$ 680	\$ 18,710
York Steam Heat	1.3	2,000	50	2,050
York Railways	10.4	2,800	80	2,880
York Bus	5.2	1,500	75	1,575
Sub-Total	94.0	24,330	715	25,045
Glen Rock L. & P.	5.0	1,500	75	1,575
Total	100.0	\$ 25,830	\$ 790	\$ 26,620

Personnel Included Above

No. of Employees	Functional Occupation	Annual Salaries
1	Accountant	\$ 3,120
1	Stenographer	1,920
7	Clerks	7,560
1	Addressograph Operator	1,600
10	Total Commercial General Labor	15,640
2	Collection Manager	2,220

York Steam Heat	5.4	1,132	46	1,228
York Railways	1.2	2,566	77	2,643
Sub-Total	6.6	3,698	123	3,821
Glen Rock L. & P.	100.0	21,686	825	22,511
Total	106.6	25,384	948	26,332

No. of Employees	Functional Occupation	Annual Salaries
1	Assistant Auditor	\$ 1,100
1	Accountant	2,420
1	Statistician	1,600
1	Bookkeeper	1,250
1	Voucher Clerk	2,540
1	Time Clerk	1,240
1	Payroll Clerk	1,260
1	General Accounting Clerk	1,020
1	Accounts Receivable Bookkeeper	1,140
1	Bookkeeper	1,020
1	Typist	300
1	Office and Mail Boy	1,266
2	Clerks	
15	Total Joint Accounting	\$ 21,686

York Bus	2.9	200	7	207
Glen Rock L. & P.	100.0	6,880	261	7,141
Total	102.9	7,080	268	7,348

No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent and Asst. Safety Engineer	\$ 4,800
1	Clerk	1,597
1	Typist	85
3	Total Joint Power and Transmission Employees	\$ 6,882

Glen Rock L. & P.	100.0	16,767	638	17,405
Total	100.0	16,767	638	17,405

No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent of Distribution	\$ 4,800
1	Dist. Dept. Engineer	3,600
2	Dist. Dept. Clerk	1,142
1	Dist. Dept. Typist	1,065
1	Superintendent of Meter Dept.	3,180
6	Total Joint Dist. Employees	\$ 16,787

LEGAL DEPARTMENT				
Distribution of Retainer Fee				
Joint Utilities	Per Cent of Total	Salaries	Insurance	Total
Edison Light & Power	75.0	\$ 2,250	\$ 75	\$ 2,325
York Steam Heat	5.0	150	16	166
York Railways	10.0	300	16	316
York Bus	5.0	150	5	155
Sub-Total	95.0	2,850	92	2,942
Glen Rock L. & P.	5.0	150	5	155
Total	100.0	\$ 3,000	\$100	\$ 3,100

No. of Employees	Functional Occupation	Annual Salaries
1	Attorney	\$ 3,000

OTHER GENERAL OFFICE PERSONNEL				
Distribution of Salaries and Insurance				
Joint Utilities	Per Cent of Total	Salaries	Insurance	Total
Edison Light & Power	75.4	\$ 4,752	\$ 181	\$ 4,933
York Steam Heat	7.7	457	17	474
York Railways	8.3	421	20	441
York Bus	3.5	221	5	226
Sub-Total	94.9	5,451	223	5,674
Glen Rock L. & P.	5.1	329	12	341
Total	100.0	\$ 5,780	\$ 235	\$ 6,015

No. of Employees	Functional Occupation	Annual Salaries
1	Administrative Secretary	\$ 3,050
1	Janitor	2,240
1	Telephone Operator	560
3	Total Joint Other General Office Salaries	\$ 5,850

S U M M A R Y						
Chart No.	Department	Joint Employees (1)	York Steam Heating (2)	York Railways (3)	York Bus (4)	Glen Rock L. & P. (5)
1	Superintendence of Power and Transmission	3	\$ 948	\$ 177	\$ -	\$ 207
2	Superintendence of Distribution	6	-	-	-	3,253
3	(Commercial Department)	14	654	31	31	1,059
4	(New Business Department)	4	691	-	-	916
5	Administrative Officers	4	1,440	2,880	1,439	1,439
6	Joint General Office Clerks (Accounting)	25	1,228	2,784	660	1,370
7	Other Joint General Office Personnel	2	484	541	229	341
8	Legal Department	1	155	310	155	155
	Asst. Purchasing Agent and Stores	5	75	959	249	473
	Total	57	\$ 5,675	\$ 7,682	\$ 2,743	\$ 9,213
	Per Cent of Total		4.6	6.2	2.2	7.5

Note: The total of Column (6) represents the extent to which the supervision and other operating expenses of Edison Light and Power Company have been absorbed by the other jointly operated utilities, on the basis of results for the year ended December 31, 1936.

## LEGEND

- 1 JOINT SUPERINTENDENCE OF POWER AND TRANSMISSION PERSONNEL
- 2 JOINT SUPERINTENDENCE OF DISTRIBUTION PERSONNEL
- 3 JOINT COMMERCIAL AND NEW BUSINESS DEPARTMENT PERSONNEL
- 4 JOINT ADMINISTRATIVE OFFICERS
- 5 JOINT GENERAL OFFICE PERSONNEL (ACCOUNTING)
- 6 OTHER GENERAL OFFICE PERSONNEL
- 7 LEGAL PERSONNEL
- 8 JOINT PURCHASING AND STORES PERSONNEL
- 9 JOINT BOARD OF DIRECTORS YORK RAILWAYS & SUBSIDIARIES
- 10 JOINT BOARD OF DIRECTORS GLEN ROCK LIGHT & POWER COMPANY

EDISON L

## DISTRIBUTION OF SALARIES OF OFFICERS ON THE BASIS OF SERVICES RENDERED



York Bus				
Sub-Total	14.3	11,654	510	14,172
Glen Rock L. & P.		3,125		3,125
Total	100.0	\$ 16,779	\$ 658	\$ 17,437

Personnel Included Above		
No. of Employees	Functional Occupation	Annual Salaries
1	Superintendent of Distribution	\$ 4,000
1	Dist. Dept. Engineer	3,600
2	Dist. Dept. Clerks	4,142
1	Dist. Dept. Typist	1,065
1	Superintendent of Meter Dept.	3,140
6	Total Joint Dist. Employees	\$ 16,767

York Railways	10.4	924	35	959
York Bus	4.2	340		340
Sub-Total	91.0	5,184	197	5,381
Glen Rock L. & P.	8.1	456	17	473
Total	100.0	\$ 5,640	\$ 214	\$ 5,854

Personnel Included Above		
No. of Employees	Functional Occupation	Annual Salaries
1	Asst. Purchasing Agent	\$ 2,160
1	Stenographer	1,140
3	Stores Clerks	4,440
5	Total Joint Stores Salaries	7,740
	Less: Portion Charged to Merchandise Jobbing Clearing Account	-2,100
5	Total Joint General Stores Salaries	\$ 5,640

York Railways	10.4	924	35	959
York Bus	4.2	340		340
Sub-Total	91.0	5,184	197	5,381
Glen Rock L. & P.	8.1	456	17	473
Total	100.0	\$ 5,640	\$ 214	\$ 5,854

Personnel Included Above		
No. of Employees	Functional Occupation	Annual Salaries
1	Accountant	\$ 3,120
1	Stenographer	1,900
7	Clerks	7,660
1	Addressograph Operator	1,600
10	Total Commercial General Labor	13,620
1	Collection Manager	2,220
1	Collection Dept. Clerk	1,140
1	Collector	1,620
1	Stenographer	1,140
4	Total Contract Department Labor	6,120
14	Total Joint Commercial Department	\$ 19,740

DEPARTMENT			
Division of Retainer Fee			
Per Cent of Total	Salaries	Insurance	Total
75.0	\$ 2,250	\$ 75	\$ 2,325
5.0	150	5	155
10.0	300	10	310
5.0	150	5	155
95.0	2,850	95	2,945
5.0	150	5	155
100.0	\$ 3,000	\$100	\$ 3,100

Personnel Included Above	
Functional Occupation	Annual Salaries
	\$ 3,100

SUMMARY								
	Joint Employees (1)	York Steam Heating (2)	York Railways (3)	York Bus (4)	Glen Rock L. & P. (5)	Sub-Total (6)	Edison Light & Power (7)	Combined Total (8)
Transmission	3	\$ 948	\$ 177	\$ -	\$ 207	\$ 1,332	\$ 5,809	\$ 7,141
Accounting)	14	654	31	31	3,253	3,253	14,172	17,425
Personnel	4	691			1,059	1,775	18,715	20,490
Stores	4	1,440	2,880	1,439	916	1,607	10,158	11,765
	15	1,228	2,784	660	1,439	7,198	21,595	28,793
	5	484	541	229	1,370	6,042	16,469	22,511
	1	155	310	155	341	1,595	4,933	6,528
	5	75	959	249	473	1,756	2,325	3,100
	57	\$ 5,675	\$ 7,682	\$ 2,743	\$ 9,213	\$ 25,333	\$ 98,274	\$123,607
		4.6	6.2	2.2	7.5	20.5	79.5	100

(6) represents the extent to which the supervision and other operating salaries of personnel of Company have been absorbed by the other jointly operated utilities, on the basis of operating record December 31, 1936.

NEW BUSINESS DEPARTMENT				
Distribution of Salaries and Insurance				
Joint Utilities	Per Cent of Total	Salaries	Insurance	Total
Edison Light & Power	86.1	\$ 9,756	\$ 372	\$ 10,128
York Steam Heat	5.6	672	19	691
York Railways	-	-	-	-
York Bus	-	-	-	-
Sub-Total	92.2	10,428	391	10,819
Glen Rock L. & P.	7.8	882	44	926
Total	100.0	\$ 11,310	\$ 435	\$ 11,745

Personnel Included Above		
No. of Employees	Functional Occupation	Annual Salaries
1	New Business Manager	\$ 4,800
1	Clerk	2,640
1	Stenographer	1,500
3	Total New Business Management	8,940
1	Rural Line Representative	2,400
4	Total Joint New Business Department	\$ 11,340

## EDISON LIGHT AND POWER COMPANY

CHART SHOWING  
DISTRIBUTION OF SALARIES OF OFFICERS AND EMPLOYEES TO THE VARIOUS CLASSES OF UTILITIES  
ON THE BASIS OF SERVICES RENDERED DURING THE YEAR ENDED DECEMBER 31, 1936

DAY & ZIMMERMANN, INC.  
ENGINEERS  
NEW YORK PHILADELPHIA CHICAGO

1225-1248

(fols. 1249-1250)

## RESPONDENT'S EXHIBIT 15

## Edison Light and Power Company

Statement of Net Operating Earnings Adjusted to Show the Increase in Operating Expenses Which Would be Experienced by Edison Light and Power Company if the Present Joint-Operating Arrangement with Affiliated Companies with Respect to Services of Officers and Employees on a Proportionate Basis Were Not in Effect and if the Edison Light and Power Company Were Charged a Rental for Property Belonging to the York Railways Company Which It Now Uses.

Results for the Year Ended December 31, 1936

Net Operating Earnings as shown on Line (31) of Company Exhibit No. 14..... \$648,024

Deduct:

Summary of Distribution of Salaries and Insurance of Officers and Employees of Respondent to other jointly operated utilities, on the basis of operating results for the year ended December 31, 1936 as shown by Column (6) of Company Exhibit No. 12

Superintendence of Power and Transmission.....	\$1,332
Superintendence of Distribution.....	3,253
Commercial Department Operation.....	1,775
New Business Department Operation.....	1,607
Administrative Officers.....	7,198
General Office Accounting Clerks.....	6,042
Other General Office Personnel.....	1,595
Legal Department.....	775
Asst. Purchasing Agent and Stores Clerks.....	1,756

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 \$25,333

Less: Salaries of the equivalent of 4 Accounting Department employees on an annual basis whose services would not be required by the Respondent on the basis of terminating the existing joint operating arrangement

1 Time Clerk.....	\$1,320
1 General Accounting Clerk.....	1,260
1 Bookkeeper.....	1,140
1 Office Clerk.....	1,020

---

 4,740

Estimated Rental for property belonging to the Railway Company and used by the Edison Light and Power Company as detailed in Company's Exhibit No. 10..... 18,794

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 \$20,593

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 39,387

Net Operating Earnings as Adjusted..... \$608,637

EDISON LIGHT AND POWER COMPANY

DETERMINATION OF EXCESS OR DEFICIENCY OF INCOME OF PEOPLES ELECTRIC LIGHT COMPANY

BASED ON A RETURN OF 8% APPLIED TO FIXED CAPITAL AND WORKING CAPITAL INVESTMENT

Line No.	Period or Year	Determination of Base					Determination of Net Earnings			
		Fixed Capital As Recorded On the Books (A)	Adjustments (B)	Adjusted Fixed Capital (C)	Estimated Working Capital (D)	Total Col. (C) & (D) (E)	Return of 8% Applied To Col. (E) (F)	Earnings Before Depreciation Provisions (G)	Estimated Depreciation (H)	Estimated Earnings After Depreciation Provision (I)
1	1886	**	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	1887	**	-	-	-	-	-	-	-	-
3	1888	**	-	-	-	-	-	-	-	-
4	1889	**	50,657***	50,657	1,900	52,557	4,205	2,117	1,500	61
5	11/30/89 to 1/24/91	**	51,707***	51,707	2,000	53,707	5,013	4,271	1,800	2,47
6	1/24/91 to 4/30/92	**	53,259***	53,259	2,000	55,259	5,526	7,584	2,000	5,58
7	4/30/92 to 9/30/92	**	53,419***	53,419	2,000	55,419	1,847	4,972	700	4,27
8	9/30/92 to 9/30/93	**	59,384***	59,384	2,300	61,684	4,935	6,625	1,800	4,82
9	1894	\$ 66,666	7,429*	59,237	Property Acquired by Edison Electric Light Company of York in 1894					

\*Denotes Contra  
 \*\*Figures Not Available  
 \*\*\*Figures Obtained from Minute Book



Exhibit No. 17  
Sheet No. 1 of 5

ELECTRIC LIGHT COMPANY

LONG CAPITAL INVESTMENT

Determination of Net Earnings

<u>ings ore iation sions</u> (G)	<u>Estimated Depreciation</u> (H)	<u>Estimated Earnings After Depreciation Provisions</u> (I)	<u>Earnings in Excess or Deficient of an 8% Return</u> (J)
-	\$ -	\$ -	\$ -
-	-	-	-
2,117	1,500	617	3,588*
4,271	1,800	2,471	2,542*
7,584	2,000	5,584	58
4,972	700	4,272	2,425
6,625	1,800	4,825	110*
Company of York in 1894			

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38-69



EDISON LIGHT AND POWER COMPANY

DETERMINATION OF EXCESS OR DEFICIENCY OF INCOME OF WESTINGHOUSE ELECTRIC LIGHT HEAT & POWER COMPANY  
BASED ON A RETURN OF 8% APPLIED TO FIXED CAPITAL AND WORKING CAPITAL INVESTMENT

Line No.	Period or Year	Determination of Base					Return of 8% Applied To Col. (E)	Determination of Net Earnings		
		Fixed Capital As Recorded On the Books (A)	Adjustments (B)	Adjusted Fixed Capital (C)	Estimated Working Capital (D)	Total Col. (C) & (D) (E)		Earnings Before Depreciation Provisions (G)	Estimated Depreciation (H)	Depreciation (I)
1	10/1/92 to 12/31/92	\$ **	\$ 16,086***	\$ 16,086	\$ 1,800	\$ 17,886	\$ 358	\$ 2,674****	\$ 100	\$
2	1893	**	43,448***	43,448	1,800	45,248	3,620	3,035*	1,300	
3	1/4/94 to 12/4/94	**	43,448***	43,448	2,000	45,448	3,633	1,125*	1,200	
4	12/4/94 to 1/4/96	**	43,448***	43,448	1,800	45,248	3,621	5,626	1,400	
5	1/13/96 to 1/5/97	**	43,448***	43,448	1,600	45,048	3,604	5,679	1,300	
6	1/9/97 to 1/5/98	28,829	8,872	37,701	1,600	39,301	3,144	5,006	1,100	
7	1898	29,040	8,872	37,912	1,600	39,512	3,161	5,155	1,100	
8	1899	29,075	8,872	37,947	1,900	39,847	3,188	1,886	1,100	
9	1900	63,004	22,330*	40,674	1,700	42,374	3,390	2,314	1,200	
10	1901	66,038	22,330*	43,708	700	44,408	3,553	4,085	1,300	
11	1902	66,538	22,330*	44,208	700	44,908	3,593	1,099*	1,300	

\*Denotes Contra

\*\*Not Available

\*\*\*Based on Minute Book Statements

\*\*\*\*1892 and 1893 Loss Not Given Separately - 1893 Loss as Shown by Capital Stock Report Used and 1892 Loss Derived by Difference



TRIC LIGHT HEAT & POWER COMPANY  
NG CAPITAL INVESTMENT

<u>Determination of Net Earnings</u>			
<u>Earnings Before Depreciation Provisions</u>	<u>Estimated Depreciation</u>	<u>Estimated Earnings After Depreciation Provisions</u>	<u>Earnings in Excess or Deficient of an 8% Return</u>
<u>(G)</u>	<u>(H)</u>	<u>(I)</u>	<u>(J)</u>
\$ 2,674****	\$ 100	\$ 2,774*	\$ 3,132*
3,035*	1,300	4,335*	7,955*
1,125*	1,200	2,325*	5,658*
5,626	1,400	4,226	305
5,679	1,300	4,379	775
5,006	1,100	3,906	762
5,155	1,100	4,055	894
1,886	1,100	786	2,402*
2,314	1,200	1,114	2,276*
4,085	1,300	2,785	768*
1,099*	1,300	2,399*	5,992*

Stock Report Used and

EDISON LIGHT AND POWER COMPANY

DETERMINATION OF EXCESS OR DEFICIENCY OF INCOME OF EDISON ELECTRIC LIGHT CO.  
BASED ON A RETURN OF 8% APPLIED TO FIXED CAPITAL AND WORKING CAPITAL INVESTED

Line No.	Period or Year	Determination of Base				Return of 8% Applied To Col. (E)	Determination of	
		Fixed Capital As Recorded On the Books (A)	Adjustments (B)	Adjusted Fixed Capital (C)	Estimated Working Capital (D)		Earnings Before Depreciation Provisions (G)	Estimated Depreciation (H)
1	4/13/87 to 11/30/87	\$ 85,680	\$ -	\$ 85,680	\$ 3,300	\$ 88,980	\$ 5,339	\$ 5,246**
2	1888	77,353	-	77,353	3,000	80,353	6,428)	2,000
3	1889	79,080	-	79,080	3,000	82,080	6,566)	2,000
4	1890	80,384	-	80,384	3,100	83,484	6,679	2,000
5	1891	90,530	-	90,530	3,500	94,030	7,522	2,000
6	1892	116,202	-	116,202	4,400	120,602	9,648	3,000
7	1893	129,029	-	129,029	4,900	133,929	10,714	3,000
8	1894	197,447	-	197,447	7,500	204,947	16,396	5,000
9	1895	205,954	-	205,954	7,900	213,854	17,108	6,000
10	1896	209,749	-	209,749	8,000	217,749	17,420	6,000
11	1897	235,436	-	235,436	9,000	244,436	19,555	7,000

\*Denotes Contra

\*\*From Capital Stock Returns (As Revealed in Commission Exhibit No. 24 Sheet 3)  
 #26 Months Ended 12/31/89

#11 Months Ended 11/30/90

%Does Not Include 6 Months Income of Peoples Electric Light Co. which was Merged at 4/16/94

ELECTRIC LIGHT COMPANY

ING CAPITAL INVESTMENT

Determination of Net Earnings

<u>Earnings before Depreciation Provisions</u>	<u>Estimated Depreciation</u>	<u>Estimated Earnings After Depreciation Provisions</u>	<u>Earnings in Excess or Deficient of an 8% Return</u>
<u>(G)</u>	<u>(H)</u>	<u>(I)</u>	<u>(J)</u>
5,246**	\$ 2,000	\$ 3,246	\$ 2,093*
	2,300)		
197***	2,400)	4,503*	17,497*
3,867**	2,400	1,467	5,212*
6,227**	2,700	3,527	3,995*
7,849**	3,500	4,349	5,299*
9,497**	3,000	5,597	5,117*
6,256**	5,900	356	16,040*
4,170**	6,200	17,970	862
6,251**	6,300	19,951	2,531
7,311**	7,100	20,211	656

4/16/94

EDISON LIGHT AND POWER COMPANY

DETERMINATION OF EXCESS OR DEFICIENCY OF INCOME OF RED LION ELECTRIC LIGHT COMPANY  
BASED ON A RETURN OF 8% APPLIED TO FIXED CAPITAL AND WORKING CAPITAL INVESTMENT

Period or Year	Determination of Base					Return of 8% Applied To Col. (E) (F)	Determination of New	
	Fixed Capital As Recorded On the Books (A)	Adjustments (B)	Adjusted Fixed Capital (C)	Estimated Working Capital (D)	Total Col. (C) & (D) (E)		Earnings Before Depreciation Provisions (G)	Estimated Depreciation (H)
1891	**	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1892	**	-	-	-	-	-	-	-
1893	**	-	-	-	-	-	-	-
1894	**	-	-	-	-	-	-	-
1895	**	-	-	-	-	-	-	-
1896	**	-	-	-	-	-	-	-
1897	**	8,000***	8,000	300	8,300	664	387	-
1898	**	8,225****	8,225	300	8,525	682	588	200
1899	**	8,225****	8,225	300	8,525	682	651	200
1900	**	8,225****	8,225	300	8,525	682	616	300

\*Denotes Contra  
 \*\*Figures Not Available  
 \*\*\*Based on Amount Received at Sheriff's Sale of Entire Assets as Recorded in Minute Book - Sale  
 \*\*\*\*Additions Obtained by Reference to Capital Stock Reports

ELECTRIC LIGHT COMPANY  
ING CAPITAL INVESTMENT

<u>Determination of Net Earnings</u>			
<u>Earnings before Depreciation Provisions</u> (G)	<u>Estimated Depreciation</u> (H)	<u>Estimated Earnings After Depreciation Provisions</u> (I)	<u>Earnings in Excess or Deficient of an 8% Return</u> (J)
-	\$ -	\$ -	\$ -
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
387	200	187	477*
588	200	388	294*
651	300	351	331*
616	300	316	366*

12 Minute Book - Sale Made 7/1/97



EDISON LIGHT AND POWER COMPANY

DETERMINATION OF EXCESS OR DEFICIENCY OF INCOME OF MERCHANTS ELECTRIC LIGHT HEAT & POWER

BASED ON A RETURN OF 8% APPLIED TO FIXED CAPITAL AND WORKING CAPITAL INVESTMENT

		Determination of Base				Determination of Net		
No.	Period or Year	Fixed Capital As Recorded On the Books	Adjustments	Adjusted Fixed Capital	Estimated Working Capital	Total Col. (C) & (D)	Return of 8% Applied To Col. (E)	Earnings Before Depreciation Provisions
		(A)	(B)	(C)	(D)	(E)	(F)	Estimated Depreciation (H)
1	1901	\$ 41,367	-	\$ 41,367	\$ 2,400	\$ 43,767	\$ 3,501	\$ -
2	1902	74,329	-	74,329	2,400	76,729	6,138	2,486
3	1903	101,791	-	101,791	3,900	105,691	8,455	846
4	1904	112,922	-	112,922	3,500	116,422	9,314	10,640
5	1905	125,889	-	125,889	4,400	130,289	10,423	12,834
6	1906	139,258	-	139,258	7,700	146,958	11,757	1,367
7	1907	173,038	-	173,038	5,800	178,838	14,307	14,504
8	1908	182,606	-	182,606	7,000	189,606	15,168	8,859
9	1909	188,306	-	188,306	6,500	194,806	15,584	19,108
10	1910	194,662	-	194,662	7,300	201,962	16,157	23,331

\*Denotes Contra



CENTRIC LIGHT HEAT & POWER COMPANY

FIXED CAPITAL INVESTMENT

Determination of Net Earnings

<u>Earnings Before Depreciation Provisions</u>	<u>Estimated Depreciation</u>	<u>Estimated Earnings After Depreciation Provisions</u>	<u>Earnings in Excess or Deficient of an 8% Return</u>
(G)	(H)	(I)	(J)
-	\$ 1,200	\$ 1,200*	\$ 4,701*
2,486	2,200	286	5,852*
846	3,100	2,254*	10,709*
10,640	3,400	7,240	2,074*
12,834	3,800	9,034	1,389*
1,367	4,200	2,833*	14,590*
14,504	5,200	9,304	5,003*
8,859	5,500	3,359	11,809*
19,108	5,600	13,508	2,076*
23,331	5,800	17,531	1,374

**EDISON LIGHT AND POWER COMPANY**  
**STATEMENT OF REPRODUCTION COST ESTIMATES**  
**OF**  
**FIXED AND TANGIBLE PROPERTY**  
**AS OF**  
**NOVEMBER 30, 1936 AND MAY 31, 1937**

Account Number	Description	Estimated Cost at Reproduction Price		
		November 30, 1936	on or about May 31, 1937	Increase
200	Organization	\$ 67,333	\$ 72,704	\$ 5,371
<b>Steam Generating System</b>				
204	Land	44,137	44,137	-
207	Structures	221,850	241,870	19,972
208	Railroad Sidings and Trestles	150	161	11
209	Boiler Plant Equipment	333,441	373,803	40,362
210	Steam Engines and Turbines	46,908	51,800	4,892
211	Turbo Generators	154,972	160,148	5,176
212	Other Electric Generators	104,177	111,535	7,358
213	Other Electric Equipment	278,440	297,042	18,602
214	Coal Storage and Weighing Equipment	23,114	24,092	978
215	Other Power Plant Equipment	10,510	11,360	850
<b>Transmission System</b>				
217	Land	11,446	11,446	-
219	Rights of Way	1,466	1,466	-
220	Transmission System Structures	22,611	24,400	1,789
241	Substation Equipment	425,519	506,453	80,934
242	Poles and Pictures	69,519	70,452	933
243	Overhead Conductors	96,824	101,112	4,288
244	Overhead Telephone System	841	841	-
245	Underground Conductors	15,102	15,732	630
246	Underground Conductors	5,181	10,147	4,966
<b>Distribution System</b>				
247	Rights of Way	846	846	-
248	Poles and Pictures	520,459	560,171	39,712
249	Overhead Conductors	116,446	126,219	9,773
250	Overhead Transformers	177,355	187,444	10,089
251	Overhead Transformer Installations	17,281	17,281	-
252	Overhead Services	162,803	162,803	-
253	Underground Conductors	8,283	10,271	1,988
254	Underground Conductors	246,106	246,106	-
255	Motors	25,102	29,274	4,172
256	Motor Installation	-	-	-
<b>Illumination System</b>				
273	Municipal Street Illumination System	246,118	270,950	24,832
274	Other Illumination Equipment	14,350	15,185	835
<b>General Property</b>				
275	General Office Land	113,525	113,525	-
276	General Office Structures	23,150	27,150	4,000
277	General Office Equipment	110,563	121,172	10,609
278	General Office Structures	62,178	67,495	5,317
279	General Office Equipment	57,124	61,619	4,495
280	General Store Equipment	8,400	9,451	1,051
281	General Store Equipment	51,432	51,432	-
282	General Garage Equipment	21,062	21,062	-
283	General Laboratory Equipment	4,297	4,727	430
284	General Tools and Implements	-	-	-
<b>Unallocated Construction Expenditures</b>				
285	Engineering and Superintendence During Construction	202,001	218,731	16,730
286	General Officers' and Clerks' Salaries During Construction	44,880	48,405	3,525
287	General Officers' and Clerks' Expenses	13,667	16,172	2,505
288	Office Supplies and Expenses During Construction	11,222	12,124	902
289	Low Expenditures During Construction	27,845	28,248	403
290	Insurance and Damages During Construction	14,880	14,880	-
291	Insurance During Construction	22,445	24,240	1,795
292	Interest During Construction	44,880	48,405	3,525
293	Interest During Construction	298,961	322,961	24,000
294	Disbursements and Expenses (Cost of Financing)	298,961	322,961	24,000
295	Total Reproduction Cost (Exclusive of Working Capital and Going Concern Value)	\$5,572,134	\$6,219,812	\$647,678

[fol. 1290]

## COMPANY EXHIBIT No. 19

Edison Light and Power Company  
Statement of Net Operating Earnings

Twelve Months Ended September 30, 1937

With a reflection of unrecorded operating expense items

Operating revenues .....	\$2,202,328.81
Operating expenses and taxes .....	1,595,407.76
Net operating earnings .....	<u>\$606,921.05</u>
Adjustment of net operating earnings for unrecorded items:	
Rental of property owned by York Railways Company but used by Edison Light and Power Company at annual cost of .....	\$18,000.00
Payroll increases made effective during 1937 reflected on annual basis .....	13,488.00
Pension cost reflected on annual basis .....	5,819.00
Proportion of annual salaries of common administrative personnel of Edison Light and Power Company and affiliates paid by Edison Light and Power Company and reflected on annual basis .....	20,593.00
Estimate for rate case expense of Commission and regulatory expense to be assessed by Commission under Section 1201 of Public Utility Law .....	21,792.00
Total adjustments .....	<u>\$79,692.00</u>
Adjusted Net Operating Earnings .....	<u><u>\$527,229.05</u></u>

[fol. 1291]

## COMPANY EXHIBIT No. 19-A

Sheet 1 of 3

## Edison Light and Power Company

Detail of Operating Revenues, Expenses and Taxes for the Year Ended September 30, 1937

## Operating Revenues:

	Traffic Schedule	3 Months Ended 12-31-36	9 Months Ended 9-30-37	12 Months Ended 9-30-37
RL	Domestic service	\$230,158.41	\$697,832.93	\$927,991.34
A	City lighting service	544.23	1,499.94	2,044.17
B	Suburban Lighting service	624.78	1,637.82	2,262.60
GL	General Lighting service	119,400.02	346,105.41	465,505.43
PR	Lighting service at 2300 Volts	791.43	2,382.27	3,173.70
P-1	Retail power service	14,731.16	44,267.63	58,998.79
P-2	Wholesale power service	117,789.87	349,396.59	467,186.46
P-4	High tension power interchange service	6,610.00	47,214.00	53,824.00
P-5	Current to Non-Affil. electric utility companies	4,586.03	14,391.36	18,977.39
HC	Heating and cooking service	3,044.68	9,806.66	12,851.34
CBH	Cooking, banking and heating	965.70	3,732.09	4,697.79
SL	Series Tungsten lamps	348.00	1,060.88	1,408.88
AS	Auxiliary service	17.66	59.05	76.71
TS	Temporary service	1,772.19	844.18	2,616.37
OPH	Restricted off peak water heating	435.77	1,956.06	2,391.83
M	Municipal Street lighting (except City of York)	5,893.34	17,893.77	23,787.11
MCY	Municipal Street Lighting (City of York)	14,436.32	43,337.42	57,773.74
P-2	Wholesale power service (Special provisions (c) and (d))	1,606.01	4,360.81	5,966.82
BLI	Borderline interchange service (Metropolitan Edison Co.)	244.14	451.10	695.24
P-2	Wholesale Power service (Special Provision (c) and (d) Glen Rock Elec. Lt. & Pr. Co.)	21,711.62	66,438.39	88,150.01
		\$545,711.36	\$1,654,668.36	\$2,200,379.72
	Miscellaneous discount, reconnect and service charges	561.91	1,387.18	1,949.09
	Total operating revenue	\$546,273.27	\$1,656,055.54	\$2,202,328.81

[fol. 1292]

## Company Exhibit No. 19-A—Sheet 2 of 3

## Edison Light and Power Company

Detail of Operating Revenues, Expenses and Taxes for the Year Ended September 30, 1937

	3 Months Ended 12-31-36	9 Months Ended 9-30-37	12 Months Ended 9-30-37
Operating Expenses:			
Production Expenses	\$154,211.35	\$486,540.12	\$640,751.47
Transmission Expenses	2,338.12	7,331.77	9,669.89
Distribution Expenses	15,891.49	57,743.37	73,635.16
Utilization Expenses	3,379.93	12,028.37	15,408.30
Commercial Expenses	14,572.64	50,100.41	64,673.05
New Business Expenses	11,688.53	39,238.71	50,927.24
General Administrative Expenses	18,331.88	60,599.21	78,931.09
Other General Expenses	47,110.04	138,120.52	*185,230.56
Depreciation	34,499.16	108,032.21	142,531.37
Total Operating Expenses	\$302,023.14	\$959,734.99	\$1,261,758.13
Taxes:			
Local	\$9,965.00	\$27,945.00	\$37,910.00
State	34,084.97	93,364.16	127,449.13
Federal—Energy	10,070.05	32,366.70	42,436.75
Federal—Capital Stock	2,490.00	7,544.00	10,034.00
Federal—Miscellaneous	2,936.61	2,738.41	5,675.02
Federal—Income	40,712.17	69,432.56	110,144.73
Total Taxes	\$100,258.80	\$233,390.83	\$333,649.63
Total Operating Expenses and Taxes	\$402,281.94	\$1,193,125.82	\$1,595,407.76
Net Operating Earnings	\$143,991.33	\$462,929.72	\$606,921.05
Includes			
Rate Case Expense			\$127,935.26
Other Regulatory Commissions Expense			10.80

(Here follows one photolithograph, side folio 1293-1296)





EDISON LIGHT AND POWER COMPANY  
DETAIL OF LOCAL, STATE AND FEDERAL TAXES

Company Exhibit 19A  
Sheet 3 of 3

	BASIS	TOTAL	RATE
<b>TAXES:</b>			
<u>Local</u>			
Gross Receipts - City of York	Estimated	\$36 650 00	
Pole Taxes - Various Boroughs	Estimated	660 00	3% Various
School Taxes - " Locations	Estimated	600 00	
Total Local Taxes		\$ 37 910 00	
<u>State</u>			
Gross Receipts - Penn'a. - 3 Mos. 1936			
Revenue Less: Glen			
Rock Co. Sales Net			
\$546 273 27 \$21 711 62 \$524 561 65	20 Mills	\$10 491 00	20 Mills
Gross Receipts - Penn'a. - 9 Mos. 1937			
Revenue Less: Glen			
Rock Co. Sales Net			
\$1 686 175 55 None \$1 686 175 55	20 Mills	33 724 00	20 Mills
Capital Stock - Penn'a.			
Corporate Loans - (Consumers Deposits)			
State Net Income - 3 Mos. 1936	Estimated	33 000 00	5 Mills
Earnings (Basis for both taxes)		555 00	8 Mills
Tax (10% of Basis)	\$180 340 85 @ 10%		
Less 10% of Federal Tax	18 034 09		
Total 3 Mos. 1936	2 705 12		
State Net Income - 9 Mos. 1937		\$15 328 97	10%
Earnings (Basis for both taxes)	\$505 452 88 @ 7%		
Tax (7% of Basis)	35 381 70		
Less 7% of Federal Tax	5 225 75		
Total 9 Mos. 1937		30 155 95	
State Unemployment Insurance - 9 Mos. 1937			
Taxable Wages	\$233 011 50	4 660 23	7%
Less Federal Portion	10%	466 02	2% (10% State 90% Federal)
Total States Taxes		4 194 21	
		\$127 449 13	
<u>Federal</u>			
- Energy			
- Capital Stock			
- Miscellaneous			
Telephone and Telegraph			
Unemployment Insurance - 3 Mos. 1936 Adjustment		\$ 88 34	
Taxable Wages \$233 011 50	2% =	\$ 2 923 75	
Less: State Portion	90%	4 660 23	
Old Age Pensions - 9 Mos. 1937		4 194 21	
Total Federal Miscellaneous		3 389 77	
- Income		2 196 91	
Earnings (Basis for both taxes)		\$ 5 675 02	1%
Tax (15% of Basis)	\$180 340 85 @ 15%		
Less (15% of State)	27 051 20		
Total 3 Mos. 1936	2 705 43		
Earnings (Basis for both taxes)	\$505 452 88 @ 15%	\$24 345 77	15%

School Taxes " Locations

Total Local Taxes

State  
Gross Receipts - Penn'a. - 3 Mos. 1936  
Revenue Less: Glen  
Rock Co. Sales Net  
\$546 273 27 \$21 711 62 \$524 561 65

Gross Receipts - Penn'a. - 9 Mos. 1937  
Revenue Less: Glen  
Rock Co. Sales Net  
\$1 686 175 55 None \$1 686 175 55

Capital Stock - Penn'a.  
Corporate Loans - (Consumers Deposits)  
State Net Income - 3 Mos. 1936

Earnings (Basis for both taxes)  
Tax (10% of Basis)  
Less 10% of Federal Tax  
Total 3 Mos. 1936

State Net Income - 9 Mos. 1937  
Earnings (Basis for both taxes)  
Tax (7% of Basis)  
Less 7% of Federal Tax  
Total 9 Mos. 1937

State Unemployment Insurance - 9 Mos. 1937  
Taxable Wages  
Less Federal Portion

Total States Taxes

Federal - Energy  
- Capital Stock  
- Miscellaneous

Telephone and Telegraph  
Unemployment Insurance - 3 Mos. 1936  
Taxable Wages \$233 011 50  
Less: State Portion

Old Age Pensions - 9 Mos. 1937  
Total Federal Miscellaneous

- Income  
Earnings (Basis for both taxes)  
Tax (15% of Basis)  
Less (15% of State)  
Total 3 Mos. 1936

Earnings (Basis for both taxes)  
Tax (15% of Basis)  
Less (15% of State)  
Total 9 Mos. 1937

Undistributed Profits Tax

Total Federal Income

Total Taxes per Exhibit 19A

Estimated  
Estimated

20 Mills

\$10 491 00

20 Mills

33 724 00

Estimated

\$180 340 85 @ 10%  
18 034 09  
2 705 12

\$15 328 97

\$505 452 88 @ 7%  
35 381 70  
5 225 75

30 155 95

\$233 011 50

2%  
10%

4 660 23  
466 02

45 484 92

4 194 21

\$127 449 13

42 436 75  
10 034 00

\$ 88 34

3 389 77  
2 196 91

\$ 5 675 02

\$180 340 85 @ 15%  
27 051 20  
2 705 43

\$24 345 77

\$505 452 88 @ 15%  
74 657 93  
5 225 37

\$69 432 56

Estimated \$16 366 40

660 00  
600 00

\$ 37 910 00

Various

20 Mills

20 Mills

5 Mills  
8 Mills

10%

7%

2% (10% State  
90% Federal)

3% less exemptions  
\$1.00 per \$1,000 of Declared Value (\$10,259,418)

1%

15%

15%

\$110 144 73

\$333 649 63

1034A.

Company Exhibit 19A  
Sheet 3 of 3

TOTAL

RATE

3%  
Various

\$ 37 910 00

20 Mills

20 Mills

5 Mills

8 Mills

10%

7%

2% (10% State  
90% Federal

\$127 449 13

42 436 75  
10 034 00

3% less exemptions  
\$1.00 per \$1,000 of Declared Value (\$10,259,418)



\$ 37 910 00

20 Mills

20 Mills

5 Mills

8 Mills

10%

7%

2% (10% State  
90% Federal

\$127 449 13

42 436 75

10 034 00

3% less exemptions

\$1.00 per \$1,000 of Declared Value (\$10,259,418)

\$ 5 675 02

1%

15%

\$110 144 73

15%

\$333 649 63

1293-1296

[fols. 1297-1315] COMPANY EXHIBIT 19-D

Resolution Passed by Directors of Edison Light and Power  
Company

York, Pa.

Resolved, that this Company pay in full the present salaries of all its officers and employees without charging or allocating any part thereof to any affiliate company; that the President be and is hereby directed to discontinue as rapidly as feasible the existing practice of having the employees of this Company render services to other affiliated companies; and that the President be and is hereby authorized and directed to make application to the Pennsylvania Public Utility Commission for the approval of the changes effected and to be effected by and in pursuance of this resolution, if advised by counsel that such approval is necessary, and to file with the Commission such statement with regard thereto as may be required by law or the regulations of the Commission.

I, M. G. Stees, Secretary of Edison Light and Power Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a full, true and correct copy of a resolution of the Board of Directors of the said Company, duly and regularly convened and held on the 28th day of October, 1937, at which a quorum was present and voted; that said resolution is still in full force and effect and has not been rescinded.

In Witness Whereof, I have hereunto affixed my hand and corporate seal of Edison Light and Power Company this 15th day of November 1937.

(S.) M. G. Stees, Secretary. (Seal.)



[fol. 1316]

## COMPANY EXHIBIT No. 20.

## Edison Light and Power Company

## Payroll Increase

Date of Increase	Annual Increase	September Period Not Reflected
1/ 4/37	\$600	\$150
12/26/36	360	90
1/11/37	900	262
2/26/37	300	125
3/15/37	960	440
3/24/37	720	360
3/31/37	900	450
3/25/37	300	150
4/10/37	360	180
4/12/37	420	210
4/11/37	120	60
4/14/37	120	60
4/26/37	1,020	595
4/26/37	900	525
5/10/37	720	420
5/ 1/37	180	105
6/ 1/37	720	420
5/11/37	120	85
6/11/37	360	255
6/10/37	240	170
7/11/37	120	75
6/11/37	6,962	4,930
8/25/37	300	275
9/21/37	360	360
10/11/37	1,896	1,896
10/26/37	840	840
	<u>\$20,798</u>	<u>\$13,488</u>

[fol. 1317] I, S. H. Ludwig, Auditor of Edison Light and Power Company, a corporation organized and existing under the laws of the State of Pennsylvania, do hereby certify that the foregoing statement is a true and correct statement of payroll increases not reflected in the statement of expenses of said corporation for the period ending September 30, 1937.

In Witness Whereof, I have hereunto set my hand and seal this 15th day of November 1937.

(S.) S. H. Ludwig, Auditor.

[fol. 1318] COMPANY EXHIBIT No. 21

## Edison Light and Power Company

## Statement of Company's Rate Case Expenses

Legal Services	\$82,850.00
Engineering	71,178.46
Miscellaneous expenses	24,346.04
	<hr/>
	\$178,374.50

I, S. H. Ludwig, Auditor of Edison Light and Power Company, a corporation organized and existing under the laws of the State of Pennsylvania, do hereby certify that the foregoing is a true and correct statement of expenses incurred to date by said corporation in the conduct of its rate case before the Public Utility Commission of Pennsylvania.

In Witness Whereof, I have hereunto set my hand and seal this 15th day of November 1937.

(S.) S. H. Ludwig, Auditor.

[fol. 1319] COMPANY EXHIBIT No. 22

## Edison Light and Power Company

## ADDITION TO FIXED CAPITAL

December 1, 1936 to September 30, 1937

January 1, 1937 to September 30, 1937

Description	Gross		Net
	Additions	Retirements	Additions
Central plant feeder	\$1,965.12	None	\$1,956.12
Transmission lines	3,164.81	234.45	2,930.36
Substations	402.08	50.09	351.99
Distribution & St. Ltg.	90,839.20	15,488.02	75,351.18
Meters	10,397.44	1,296.16	9,101.28
Services	9,355.63	1,150.06	8,205.57
Transformers	17,084.23	1,999.86	15,084.37
Misc. tools and equip.	4,741.74	93.15	4,648.59
Transportation equip- ment	5,312.50	1,102.15	4,210.35
	<hr/>	<hr/>	<hr/>
	\$143,262.75	\$21,413.94	\$121,848.81

December 1, 1936 to December 31, 1936.

\$21,002.26	•	\$21,002.26
-------------	---	-------------

Total November 30, to Sept. 30, 1937	\$164,265.01	\$21,413.94	\$142,851.07
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I, S. H. Ludwig, Auditor of Edison Light and Power Company, a corporation organized and existing under the laws of the State of Pennsylvania, do hereby certify that the foregoing statement of additions to the fixed capital account [fol. 1320] of said corporation for the period from December 1, 1936 to December 31, 1936 and from January 1, 1937 to September 30, 1937, is a true and correct statement of such additions.

In Witness Whereof, I have hereunto set my hand and seal this 15th day of November 1937.

(S.) S. H. Ludwig, Auditor.

\* The company recorded retirements of \$15,484.38 on its books in the month of December 1936 which had already been reflected in the Day & Zimmermann estimates at November 30, 1936.

(Here follow four photolithographs, side folios 1321, 1322, 1323, 1324-1327)

**EDISON LIGHT AND POWER COMPANY**  
**DETAIL OF OPERATING EXPENSES**  
**FOR THE YEAR ENDED SEPTEMBER 30, 1937**

**3 Months - 1936**

**P.U.C. PUBLIC UTILITY COMMISSION CLASSIFICATION**  
**ACCTS. Description**

**Total**

<b>I PRODUCTION</b>		
350	Superintendence	\$ 2 126 55
351	Boiler Labor	2 788 29
352	Engine Labor	2 116 29
353	Electric Labor	3 309 19
354	Other Labor	252 47
355	Fuel	23 983 34
356	Sale of Ashes	69 04
358	Water	926 11
359	Lubricants	82 38
362	Other Power Supplies	562 75
363	Other Power Expenses	1 148 90
365	Maintenance Power Plant Structures	1 521 15
367	" Boiler Plant Equipment	2 343 01
368	" Steam Turbines & Engines	369 06
369	" Turbo-Generators	466 29
370	" Other Electric Generators	664 77
371	" Other Electric Equipment	430 54
373	" Other Power Plant Equipment	356 40
413	Electricity Purchased	156 248 88
414	Duplicate Production Expenses-Credit	33 960 52
414	Production Expense-Credit (Rys. & Other)	11 593 54

**Total Production**

**\$154 211 35**

**II TRANSMISSION**

415	Superintendence	\$ 382 86
416	Overhead Transmission Labor	43 39
418	Substation Labor	437 50
421	Supplies & Expenses Overhead Trans-System	13 89
423	Substation Supplies and Expenses	249 44
427	Maintenance Transmission System Structures	31 06
428	" Poles and Fixtures	113 39
429	" Overhead Conductors	98 82
434	" Substation Equipment	967 77

**Total Transmission**

**\$ 2 338 12**

**9 Months - 1937**

**F.P.C. FEDERAL POWER COMMISSION CLASSIFICATION**  
**ACCTS. Description**

**Total**

<b>I PRODUCTION</b>		
701	Supervision and Engineering	\$ 5 099 74
702.1	Boiler Labor	7 716 23
702.2	Prime Mover and Generator Labor	6 438 11
702.3	Electric Labor	10 053 51
702.4	Miscellaneous Station Labor	930 21
703	Fuel	44 338 44
704	Water	2 795 80
705.1	Lubricants	176 80
705.2	Station Supplies	533 29
705.3	Station Expenses	3 056 68
706	Maintenance Supervision & Engineering	862 52
707	" Structures & Improvements	1 144 09
708.1	" Coal Storage & Weighing Eq.	1 047 58
708.2	" Furnaces and Boilers	1 611 47
708.3	" Boiler Apparatus	878 21
708.4	" Steam Piping & Accessories	762 71
709.1	" Prime Movers & Generators	728 36
709.2	" Accessory Elec. Equipment	2 091 04
709.3	" Misc. Power Plant Equip.	646 69
710	Rents	22 50
712	Steam Transferred-Credit	62 585 26
738.1	Power Purchased-Non Ass'd. Co's.	175 676 14
738.2	" " -Associated Co's.	312 635 27
-	Production Expense-Credit (Rys)	30 120 01

**Total Production**

**\$486 510 11**

**II TRANSMISSION**

743	Supervision and Engineering	\$ 887 62
745.1	Station Labor	1 081 14
745.2	Station Supplies and Expenses	693 40
746.1	Overhead Lines	200 65
747	Maintenance Supervision & Engineering	602 19
748	" Structures & Improvements	532 27
749	" Station Equipment	2 155 34
750.2	" Poles and Fixtures	84 38
750.3	" Cond. & Devices-Overhead	1 094 78

**Total Transmission**

**\$ 7 334 7**

Company Exhibit No. 23

11/19/37

Page 1

9 Months - 1937

FEDERAL POWER COMMISSION CLASSIFICATION

Station

Total12 Mos.  
Sept. 30,  
1937

and Engineering	\$ 5 099 74
or	7 716 23
and Generator Labor	6 438 11
Labor	10 053 51
ous Station Labor	930 21
	44 338 44
	2 795 80
	176 80
plies	533 29
enses	3 056 68
Supervision & Engineering	862 52
Structures & Improvements	1 144 09
Coal Storage & Weighing Eq.	1 047 58
Furnaces and Boilers	1 611 47
Boiler Apparatus	878 21
Steam Piping & Accessories	762 71
Prime Movers & Generators	728 36
Accessory Elec. Equipment	2 091 04
Misc. Power Plant Equip.	646 69
	22 50
ferred-Credit	62 585 26
ased-Non Ass'd. Co's.	175 676 14
-Associated Co's.	312 635 27
Expense-Credit (Rys)	30 120 01
tal Production	

\$486 540 12

\$640 751 47

ION

and Engineering	\$ 887 62
or	1 081 14
plies and Expenses	693 40
ees	200 65
Supervision & Engineering	602 19
Structures & Improvements	532 27
Station Equipment	2 155 34
Poles and Fixtures	84 38
Cond. & Devices-Overhead	1 094 78

tal Transmission

\$ 7 331 77

\$ 9 669 89



EDISON LIGHT AND POWER COMPANY  
DETAIL OF OPERATING EXPENSES.  
FOR THE YEAR ENDED SEPTEMBER 30, 1937

3 Months - 1936			F.P.C.		
PUBLIC UTILITY COMMISSION CLASSIFICATION			FEDERAL POWER COMMISSION CLASSIFICATION		
P.U.C. ACCTS.	Description		P.U.C. ACCTS.	Description	
III DISTRIBUTION			III DISTRIBUTION		
441	Superintendence	\$ 1 926 44	756	Supervision and Engineering	\$ 3 334 21
442	Overhead Dist. System Labor	77 10	757	Load Dispatching Labor and Expenses	6 55
443	Underground Dist. " "	6 51	758.1	Distribution Maps and Records	1 973 39
444	Labor removing and Resetting Meters	36 59	758.2	Other Distribution Office Expense	1 751 91
445	Labor inspecting and Testing Meters	908 89	759.2	Station Supplies and Expenses	5 70
446	Other Meter Dept. Labor	58 81	761.1	Overhead Lines	4 845 43
447	Labor inspecting, removing & resetting Transf.	219 99	761.2	Underground Lines	69 29
448	Labor Making Dist. Maps & Records	494 39	1.3	Removing and Resetting Line Transformers	2 626 62
449	Other Dist. System Labor	471 69	762.1	" " Meters	5 316 94
450	Supplies & Expenses Overhead Dist. System	5 25	776	Rents	150 50
452	Meter Dept. Supplies and Expenses	329 84	764	Maintenance Supervision & Engineering	1 938 19
453	Transformer Supplies and Expenses	44 30	768.1	" Poles, Towers & Fixtures	9 057 09
454	Map and Record Supplies and Expenses	64 36	768.2	" Conductors & Devices-Overhead	10 855 23
456	Other Dist. System Supplies and Expenses	801 10	769.2	" " Underground	14 58
457	Maintenance Dist. System Structures	-	770	" Line Transformers & Devices	8 300 41
458	" Poles and Fixtures	3 578 32	771	" Services	4 655 92
459	" Overhead Conductors	3 238 80	772	" Meters	2 931 74
461	" Underground Conductors	-			
462	" Overhead Services	926 14			
464	" Transformers	1 713 74			
466	" Meters	989 23			
Total Distribution		\$15 891 49	Total Distribution		

IV UTILIZATION			IV UTILIZATION		
468	Municipal St. Incandescent System Labor	\$ 330 36	762.2	Investigating & Adjusting Service Complaints	\$ 1 836 94
473	Consumers Premises Inspection Labor	-	762.3	Lamp Service-Arc and Incandescent	51 83
474	Other Consumers Premises Labor	1 292 29	762.4	Maintenance of Fixtures and Appliances	178 35
476	Municipal St. Incan. System Sup. & Expenses	703 09	762.5	Radio Interference Work	781 12
481	Consumers Premises Inspection Sup. & Expenses	37 50	762.6	Other Work on Consumers Premises	1 493 48
482	Other Consumers Premises Sup. & Expenses	532 32	763.1	Overhead System - (Street Lighting)	1 509 40
484	Maintenance Municipal St. Incan. System	484 37	775	Maintenance St. Lighting & Signal Systems	4 444 20
Total Utilization		\$ 3 379 93	520.391	Service during Guaranty Period-Domestic	1 733 05

3 Months - 1936			9 Months - 1937		
PUBLIC UTILITY COMMISSION CLASSIFICATION			FEDERAL POWER COMMISSION CLASSIFICATION		
P.U.C. ACCTS.	Description		P.U.C. ACCTS.	Description	
III DISTRIBUTION			III DISTRIBUTION		
441	Superintendence	\$ 1 926 44	756	Supervision and Engineering	\$ 3 334 21
442	Overhead Dist. System Labor	77 10	757	Load Dispatching Labor and Expenses	6 55
443	Underground Dist. " "	6 51	758.1	Distribution Maps and Records	1 973 39
444	Labor removing and Resetting Meters	36 59	758.2	Other Distribution Office Expense	1 751 91
445	Labor inspecting and Testing Meters	908 89	759.2	Station Supplies and Expenses	5 70
446	Other Meter Dept. Labor	58 81	761.1	Overhead Lines	4 845 43
447	Labor inspecting, removing & resetting Transf.	219 99	761.2	Underground Lines	69 29
448	Labor Making Dist. Maps & Records	494 39	1.3	Removing and Resetting Line Transformers	2 626 62
449	Other Dist. System Labor	471 69	762.1	" " Meters	5 316 94
450	Supplies & Expenses Overhead Dist. System	5 25	776	Rents	150 50
452	Meter Dept. Supplies and Expenses	329 84	764	Maintenance Supervision & Engineering	1 938 19
453	Transformer Supplies and Expenses	44 30	768.1	" Poles, Towers & Fixtures	9 057 09
454	Map and Record Supplies and Expenses	64 36	768.2	" Conductors & Devices-Overhead	10 855 23
456	Other Dist. System Supplies and Expenses	801 10	769.2	" " Underground	14 58
457	Maintenance Dist. System Structures	-	770	" Line Transformers & Devices	8 300 41
458	" Poles and Fixtures	3 578 32	771	" Services	4 655 92
459	" Overhead Conductors	3 238 80	772	" Meters	2 931 74
461	" Underground Conductors	-			
462	" Overhead Services	926 14			
464	" Transformers	1 713 74			
466	" Meters	989 23			
Total Distribution		\$15 891 49	Total Distribution		
IV UTILIZATION			IV UTILIZATION		
468	Municipal St. Incandescent System Labor	\$ 330 36	762.2	Investigating & Adjusting Service Complaints	\$ 1 836 94
473	Consumers Premises Inspection Labor	-	762.3	Lamp Service-Arc and Incandescent	51 83
474	Other Consumers Premises Labor	1 292 29	762.4	Maintenance of Fixtures and Appliances	178 35
476	Municipal St. Incan. System Sup. & Expenses	703 09	762.5	Radio Interference Work	781 12
481	Consumers Premises Inspection Sup. & Expenses	37 50	762.6	Other Work on Consumers Premises	1 493 48
482	Other Consumers Premises Sup. & Expenses	532 32	763.1	Overhead System - (Street Lighting)	1 509 40
484	Maintenance Municipal St. Incan. System	484 37	775	Maintenance St. Lighting & Signal Systems	4 444 20
Total Utilization		\$ 3 379 93	520.391	Service during Guaranty Period-Domestic	1 733 05



9 Months - 1937

## GENERAL POWER COMMISSION CLASSIFICATION

Section

UTILIZATION

Total

12 Mos.  
Sept. 30,  
1937

Construction and Engineering	\$ 3 334 21
Matching Labor and Expenses	6 55
Construction Maps and Records	1 873 39
Distribution Office Expense	1 751 91
Supplies and Expenses	5 70
Lines	4 845 43
and Lines	69 29
and Resetting Line Transformers	2 626 62
Meters	5 316 94
	150 50
Supervision & Engineering	1 938 19
Poles, Towers & Fixtures	9 057 09
Conductors & Devices-Overhead	10 855 23
Underground	14 55
Line Transformers & Devices	8 300 41
Services	4 655 92
Meters	2 931 74

Total Distribution

\$57 743 67

\$73 635 16

ION

ing &amp; Adjusting Service Com-

Ne-Arc and Incandescent	\$ 1 836 94
of Fixtures and Appliances	51 83
	178 35
ference Work	781 12
on Consumers Premises	1 493 48
System - (Street Lighting)	1 509 40
St. Lighting & Signal Systems	4 444 20
ing Guaranty Period-Domestic	1 733 05

Total Utilization

\$12 028 37

\$15 408 30

**EDISON LIGHT AND POWER COMPANY**  
**DETAIL OF OPERATING EXPENSES**  
**FOR THE YEAR ENDED SEPTEMBER 30, 1937**

3 Mos. 1936

**P.U.C. PUBLIC UTILITY COMMISSION CLASSIFICATION**

<b>ACCTS.</b>	<b>Description</b>		<b>Total</b>
	<b>V COMMERCIAL</b>		
489	Contract Department Labor	\$ 616 65	
490	Meter Indexing Labor	2 720 09	
491	Consumers Accounting Labor	5 014 40	
492	Collection Department Labor	3 054 99	
493	Other Commercial Department Labor	—	
494	Contract Department Supplies & Expenses	46 27	
495	Meter Indexers Supplies & Expenses	801 46	
496	Consumers Accounting Supplies & Expenses	645 68	
497	Collection Department	1 342 23	
499	Other Commercial Dept. "	320 87	
	<b>Total Commercial</b>		<b>\$14,572 68</b>

**VI NEW BUSINESS**

500	New Business Management Salaries	\$ 2 565 24
501	" " Solicitating Salaries	2 479 13
502	" " Advertising Salaries	151 69
503	Other " Salaries	553 06
505	New " Manag. Supplies & Expenses	581 95
506	" " Soliciting Supplies & Expenses	1 195 16
507	" " Advertising	718 90
508	" " Wiring	2 361 88
509	" " Signs and Devices	—
511	Other " Supplies and Expenses	234 77
-	Edse. and Jobbing-Direct Charges	805 28
	" " -Indirect Charges	1 652 03

**Total New Business**

**\$11,688**

9 Mos. 1937

F.P.C.  
ACCTS.

FEDERAL POWER COMMISSION CLASSIFICATION

Description  
V. COMMERCIAL

779	Supervision	\$ 2 120 28
780.1	Customers Contracts and Order	1 309 59
780.2	Credit Investigations and Records	3 65
780.3	Meter Reading	11 107 36
780.4	Collecting	13 273 18
781	Customers Billing and Accounting	17 059 10
782	Miscellaneous Expenses	201 03
783	Uncollectible Accounts	4 215 44
784	Rents	<u>530 58</u>

Total Commercial

VI NEW BUSINESS

785.1	Supervision Salaries-Domestic	\$ 4 344 74
785.2	" " -Commercial	2 120 71
785.3	" " -Industrial	1 431 72
785.4	Supplies & Exp.-Domestic	366 28
785.5	" " -Commercial	639 76
785.6	" " -Industrial	121 57
786.1	Salesman's Salaries - Domestic	589 94
786.2	" " - Commercial	2 693 91
786.3	" " - Industrial	1 813 35
786.4	Supplies & Exp. - Domestic	1 082 62
786.5	" " - Commercial	650 59
786.6	" " - Industrial	461 59
787.10	Demonstrations Salaries - Domestic	1 494 47
787.13	" Supplies & Exp.-Domestic	1 461 17
787.14	" " -Commercial	152 31
787.15	" " -Industrial	10 38
787.20	Advertising - Domestic	1 814 02
787.21	" - Commercial	171 19
787.22	" - Industrial	62 39
787.30	Other Salaries - Domestic	2 601 65
787.33	" Supplies & Expenses - Domestic	94 03
787.34	" " - Commercial	1 55
787.35	" " - Industrial	2 45
788	Rents	450 00
-	Misc. and Jobbing - Direct Charges	5 104 16
-	" " - Indirect charges	<u>2 341 66</u>

Total New Business

9 Mos. 1937  
OVER COMMISSION CLASSIFICATION

12 Mos.  
Sept. 30,  
1937.

	Total
Contracts and Order	\$ 2 120 28
Investigations and Records	1 309 59
	3 65
	11 107 36
Printing and Accounting	13 273 18
Expenses	17 059 10
Accounts	4 01 03
	4 215 44
	<u>530 58</u>

Commercial

\$50 100 41      \$41 673 05

EXPENSES

Salaries-Domestic	\$ 4 344 74
" -Commercial	2 120 71
" -Industrial	1 431 72
Supplies & Exp.-Domestic	1 066 28
" -Commercial	639 76
" -Industrial	121 57
Salaries - Domestic	589 94
" - Commercial	2 693 91
" - Industrial	1 813 35
Supplies & Exp. - Domestic	1 032 62
" - Commercial	650 59
" - Industrial	461 59
Salaries - Domestic	1 494 47
Supplies & Exp.-Domestic	1 461 17
" -Commercial	152 31
" -Industrial	10 88
Domestic	1 814 02
Commercial	171 19
Industrial	62 39
Expenses - Domestic	2 601 65
Expenses - Domestic	94 03
" - Commercial	1 55
" - Industrial	2 45
	450 00
Printing - Direct Charges	5 104 16
" - Indirect charges	<u>2 341 66</u>

New Business

\$39 238 71

\$50 927 24

**EDISON LIGHT AND POWER COMPANY**  
**DETAIL OF OPERATING EXPENSES**  
**FOR THE YEAR ENDED SEPTEMBER 30, 1937**

3 Months 1936					
P.U.C. ACCTS.	PUBLIC UTILITY COMMISSION CLASSIFICATION			Total	
Description					
<b>VII GENERAL ADMINISTRATIVE</b>					
512	Salaries of General Officers	\$ 5 481 12			
513	Salaries of General Office Clerks	5 306 65			
514	General Office Stationery & Printing	361 82			
515	Other General Office Supplies	78 28			
516	General Officers Expenses	515 86			
517	General Office Clerks Expenses	106 56			
518	General Law Expenses	196 45			
519	General Office Rent	--			
520	Other General Office Expenses	3 281 90			
541	" " Expenses	<u>3 002 94</u>			
Total General Administrative				\$ 18 331 88	
<b>VIII OTHER GENERAL EXPENSES</b>					
521	Maintenance General Office Structures	\$ 1 156 38			
522	" " " Equipment	266 20			
534A	Unemployment Compensation-Federal	2 377 30			
535	Uncollectible Consumers' Accounts	1 365 68			
536	Regulatory Commission Expenses	38 683 49			
537	Injuries and Damages	1 314 10			
538	Other Insurance	597 47			
539	Pensions	716 34			
541	Other General Expenses	5 367 88			
544	Duplicate Misc. Charges - Credit	618 23			
551	Maintenance Other General Structures	112 73			
519	General Office Rent	<u>225 00</u>			
Total Other General Expenses				\$ 47 110 04	
558	Renewals and Replacements			\$ 34 499 16	
Total Operating Expenses				<u>\$302 023 14</u>	

9 Months 1937					
F.P.C. ACCTS.	FEDERAL POWER COMMISSION CLASSIFICATION				
Description					
<b>VII GENERAL ADMINISTRATIVE</b>					
790.1	Supplies Gen'l. Officers - Executive	\$ 9 063 45			
790.2	" " " - Treas. & Acctg.	6 797 59			
791.1	Other Gen'l. Office Salaries - Executive	1 694 74			
791.2	" " " - Treas. & Acctg.	16 383 54			
792.11	Expenses Gen'l. Officers - Executive	1 629 06			
792.12	" " " - Treas. & Accts.	867 51			
792.13	" " " - Law Dept.	55 00			
792.21	" " " Office Employees-Executive	63 32			
792.22	" " " - Treas. & Acctg.	971 12			
793	General Office Supplies & Expenses	11 409 86			
801.1	Miscellaneous General Expense	9 498 08			
796	Legal Services	<u>2 165 94</u>			
Total General Administrative					
<b>VIII OTHER GENERAL EXPENSES</b>					
794	Management and Supervision Fees	\$12 240 00			
795	Special Services	2 324 49			
797	Regulatory Commission Expenses	89 262 57			
798	Insurance	1 712 61			
799	Injuries and Damages	3 509 42			
800.1	Employees Welfare	9 732 75			
800.2	Pensions	18 874 58			
802.1	Maintenance Structures & Improvements	3 969 71			
802.2	" " Office Furniture & Equip.	167 17			
803	Rents	427 06			
806	Duplicate Misc. Charges - Credit	<u>4 099 84</u>			
Total Other General Expenses					
503	Depreciation				
Total Operating Expenses					

Months 1937  
COMMISSION CLASSIFICATION

12 Mos.  
 Sept. 30,  
1937

ADMINISTRATIVE

Officers - Executive	\$ 9 063 45
- Treas. & Acctg.	6 797 59
Office Salaries - Executive	1 694 74
- Treas. & Acctg.	16 383 54
Officers - Executive	1 629 06
- Treas. & Accts.	867 51
- Law Dept.	55 00
Office Employees-Executive	63 32
- Treas. & Acctg.	971 12
Supplies & Expenses	11 409 86
General Expense	9 498 08
	<u>2 165 94</u>

General Administrative

\$ 60 599 21      \$ 78 931 09

GENERAL EXPENSES

Supervision Fees	\$12 240 00
	2 324 49
Mission Expenses	89 262 57
	1 712 61
Travels	3 509 42
	9 732 75
	18 874 58
Structures & Improvements	3 969 71
Office Furniture & Equip.	167 17
	427 06
Charges - Credit	<u>4 099 84</u>

Other General Expenses

\$138 120 52      \$ 185 230 56

\$108 032 21      \$ 142 531 37

Operating Expenses

\$959 734 99      \$1 261 758 13





[fol. 1328] IN UNITED STATES DISTRICT COURT FOR THE EAST-  
ERN DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1937

In Equity. No. 9893

EDISON LIGHT & POWER COMPANY, a Corporation, Complain-  
ant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAM-  
ISH, Guy K. Bard, and Donald Livingston, Individually  
and as the Persons Constituting the Pennsylvania Public  
Utility Commission, Respondents

**Statement of Evidence**—Filed January 31, 1938

Before Hon. Joseph Buffington, Hon. J. Warren Davis, Hon.  
Oliver B. Dickinson

Philadelphia, Pa., January 17, 1938.

Present:

Walter Biddle Saul, Esq., Edward A. G. Porter, Esq.,  
Clarence W. Miles, Esq., Edward F. Huber, Esq., J. Harry  
La Brum, Esq., and Morgan S. Kaufman, Esq., represent-  
ing the Complainant.

[fol. 1329] Samuel Graff Miller, Esq., representing the Re-  
spondents.

Clarence M. Lawyer, Jr., Esq., and Herbert B. Cohen,  
Esq., representing the Intervenors.

**Transcript of the Trial Record**

Judge Buffington: Are there any motions before the Court  
this morning? We have your case, Mr. Saul.

**MOTION TO STRIKE ANSWER**

Mr. Saul: Yes, sir, I have a motion in that case, sir. This  
morning I was handed an answer which Mr. Cohen tells  
me he filed on behalf of intervenors in this case. I ask that  
that answer be stricken from the record for two reasons.

First, it has no proper part in this case. He was per-  
mitted to intervene, but no permission was given to file an  
answer, and the answer itself is an argument purporting to

show that the Court has no jurisdiction, a very anomalous situation where a man gets permission to come into the Court for the sole purpose of saying that the Court has no jurisdiction, when he is not a party to it.

[fol. 1330] In the second place, I ask that the answer be stricken off because of the scandalous nature of one of the averments. I read what was said in paragraph 2:

"It is further alleged that the attempt on the part of the complainant in this bill of complaint to ignore the decision of the United States District Court for the Middle District of Pennsylvania and again raise the question of the constitutionality of Section 310 of Article III is unjustifiable, unreasonable and inequitable and demonstrates a total disregard and lack of respect for the authority of the United States District Court for the Middle District of Pennsylvania, and bespeaks a misuse of the proper functions of a court of justice."

Now, I ask that the answer be stricken off, first, because it has no place here, it merely encumbers the record; and, second, because no intervenor has the right to come in and make statements like that in a purported answer.

Mr. Cohen: If Your Honors please, the Complainant saw fit to again in its bill in equity before Your Honors raise the constitutionality of Section 310 of the Pennsylvania [fol. 1331] Public Utility Law. In the answer to the Complainant's bill in equity, the answer that I have filed, copies of which I have for Your Honors, contains the bill of complaint that the Complainant filed in the Middle District, the opinion of His Honor Judge Davis, the opinion of His Honor Judge Watson, and the opinion of His Honor Judge Johnson. We feel that it is very important that the record of this matter should contain the bill in equity as filed in this Middle District, because even a superficial reading of the bill in equity in the Middle District will indicate to Your Honors that the Complainants in this matter have taken verbatim paragraph after paragraph out of the original bill of complaint, and it is my contention that the learned opinions of the Court in the question of the Middle District conclusively decided the question of the constitutionality of the Pennsylvania Public Utility Act. It is for that reason that I have placed in my answer both the bill of complaint originally

filed and the three opinions of the Court. I feel, and I say that it is inequitable that the Complainant, once having had a judicial opinion on the matter of the constitutionality of [fol. 1332] the Pennsylvania Public Utility Law, on the same facts, as the Court can see by reading and comparing the two bills of complaint filed in the Middle District and in the Eastern District, it is inequitable that the Complainant should come into this Court and again raise those same constitutional questions.

I might say to Your Honors that I represent the consumers of York who have been deprived of a rate reduction, and if those individuals are going to be able to circumvent the opinion of a statutory court of equal powers as this Court, and to continue that delay, that these Complainants are further perverting the judicial force and effect of the Middle District Court of the United States. It is inequitable that they should do it. It is inequitable to the people who are paying excessive charges. All those are matters pertaining to their bill of complaint filed in this, and answers their bill of complaint on the question of constitutionality conclusively.

Now, I cannot see why the Complainant should object to an answer raising some of the facts which this Court in effect would take judicial knowledge of.

[fol. 1333] I can see possibly if the Complainants are the least bit sensitive about their activity or their action in taking this from the Middle District Court to the Eastern District Court, if they are sensitive about that I can see that they possibly might object to that being in the record.

I consider this answer a very pertinent part of the record, and I sincerely request Your Honors to deny the motion of Mr. Saul. The answer is not as long as it looks, the answer is very short, and from this point on—

Judge Davis: Mr. Cohen—

Mr. Cohen: Yes, Your Honor.

Judge Davis: —we are disinclined—Mr. Cohen and Mr. Saul—we are disinclined to strike out this answer.

Mr. Cohen: Thank you.

Judge Davis: At the same time, speaking personally, now, for myself, I do not think there was any impertinence in raising the constitutional question, because in the other case our order was not founded upon the constitutionality of that Act.

[fol. 1334]

## Argument

Mr. Saul: I assume, sir, that we shall have the testimony taken; we have a stenographer.

Judge Davis: Yes, we don't have any objection.

## Complainant's Evidence

HENRY D. BOENNING, having been duly sworn, was examined and testified as follows:

## Direct examination:

Mr. Miles: Now, if Your Honors please, in order that the Court may follow the testimony, the purpose of offering this witness relates to that allegation in our bill of complaint which alleges that the rates allowed us by this temporary order are confiscatory in that they have failed to allow us a reasonable rate of return, and the testimony of this witness will deal exclusively with the question of return.

Judge Buffington: Well, now, suppose you get your witness—[fol. 1335] who is the witness?

Mr. Miles: He is on the stand.

Judge Buffington: Suppose you get him on here where we all can hear him.

Mr. Miles: All right.

Judge Buffington: And, Mr. Stenographer, there is no objection, of course, to you taking the testimony. Proceed, sir.

## By Mr. Miles:

Now, Mr. Boenning, will you please state your full name, residence and occupation?

A. Will you please—

Q. I asked you to please state your full name, residence and occupation.

A. Henry D. Boenning, 7312 Emlen Street, Philadelphia. I am a partner in the banking firm of Boenning and Company, at 1606 Walnut Street, Philadelphia.

Q. Now, what is the nature and scope of the business activities of Boenning and Company?

A. Boenning and Company are members of the Philadelphia Stock Exchange and associate members of the New York Curb Exchange. We buy and sell securities for the account of our customers on commission on the various [fol. 1336] exchanges where we are represented, in addition

to the outside markets. We participate in syndicates in the distribution of securities to the public.

In addition, we underwrite, with ourselves as principal or in connection with others, issues of securities for redistribution to the public.

In addition we maintain an active trading department covering various classes of securities, but specializing very largely in public utility securities in Pennsylvania. In addition to trading in these securities we buy them for our own account for redistribution to our customers.

Q. Now, Mr. Boenning, will you be kind enough to name some of the Pennsylvania public utility corporations whose securities your firm has either underwritten or traded in in large volumes?

A. Acting solely as principal, over the last sixteen years we have underwritten and financed the Southern Pennsylvania Power Company, which was later sold to the Philadelphia Electric Company, the Citizens Water Company of Scottdale, which was purchased from a subsidiary of the United States Steel Corporation, the Gettysburg Gas, the Birdsboro Electric, the Harvey's Lake Light, and the Wayne Sewerage Company.

[fol.1337] In addition we have participated substantially in the issuance and in the disposition to the public of practically all of the utility securities which have been offered for sale by other brokers to the public.

In addition to that we take an active position in the stocks and bonds of such companies as the Pennsylvania Power and Light Company, the Metropolitan Edison, Philadelphia Electric, Luzerne County Gas and Electric, and other Pennsylvania public utility corporations.

Q. Now, are you familiar in a general way with the business and affairs of the Edison Light and Power Company, the complainant in this case?

A. I am, Mr. Miles.

Q. Have you had occasion to familiarize yourself with the earnings of that company for the calendar years 1935, 1936 and 1937?

A. I have.

Q. Have you had occasion to examine the balance sheet of that company as of September 30, 1937?

A. I have.

Q. Now, I should like to ask you, Mr. Boenning, whether you have had occasion to examine and study the appraisals



[fol. 1338] of the plant and property of the Edison Company as made by Day and Zimmermann, Incorporated.

A. I have made an examination; no extensive study of such report, Mr. Miles.

Q. But you are familiar with the conclusions reached—

A. I am.

Q. —by Day and Zimmermann? Now, Mr. Boenning, assuming that the Edison Light and Power Company was required under existing circumstances and conditions to raise the principal sum of five million, five hundred thousand dollars, to be expended for the purpose of reproducing its present plant and properties devoted to the rendition of its public service, will you state how in your opinion it could raise that sum of money?

A. The money in my opinion would have to be raised as a result of the sale of securities to the public.

Q. Now, how much of that sum, if any, would have to be obtained through the sale of bonds, as distinguished from shares of stock, under existing market conditions?

A. Three million, one hundred thousand dollars principal amount could be raised from the sale of bonds.

Q. Now, what is your basis for an expression of opinion that three million, one hundred thousand dollars would have to be raised through bond money?

[fol. 1339] A. I think there are three good reasons for that: The Public Utility Commission of Pennsylvania has handed down an order—the York Railway Company have outstanding approximately five million dollars' worth of bonds. They asked the Public Service Commission for an extension. Those bonds—

Mr. Miller: That is objected to, Your Honors. I don't think what the York Railways Company is doing or intends to do with its bonds, or the conditions of the York Railways Company, has anything to do with the rate of return to be allowed to the Edison Light and Power Company.

Mr. Miles: Your Honors, the York Railways Company owns all of the outstanding stock of the Edison Light and Power Company—

Judge Buffington: Just a minute.

Judge Davis: Gentlemen, we have no jury here, and I think we will allow wide latitude, and if what the witness is saying has no relevancy we will disregard it when we come to study the case.

Mr. Miles: May I, without burdening the Court, simply say to Your Honors, because—

Judge Davis: Well, we are with you now.

Mr. Miles: Because I don't think Judge Buffington knows [fol. 1340] the relationship between the York Railways and the Edison Company.

Judge Buffington: You needn't bother about that. I will pick it up.

Mr. Miles: All right.

The Witness: Shall I answer the question, Mr. Miles?

Mr. Miles: Go ahead.

A. (Continued.) The five million presently outstanding York Railways bonds are secured by a first mortgage on the traction property, by deposit of the stock of the York Steam Heat Company, and by deposit of the stock of the Edison Light and Power. In asking for the extension of their bonds, which were due in 1937, the Public Utility Commission handed down a ruling refusing to extend the five million bonds in an amount in excess of three million, three hundred thousand dollars.

Now, if we are confronted with the financing of the Edison Light and Power Company alone, and eliminating the other two pieces of security which are under the York Railways bonds, it is inconceivable, I think, that the Public Utility Commission would permit the issuance—

Mr. Miller: Now, I object to that. I object to the witness [fol. 1341] expressing an opinion as to what the Commission may or may not do.

Judge Davis: Well, we realize it is his opinion merely.

The Witness: Shall I proceed?

Judge Davis: Yes.

A. (Continued.) I think it inconceivable that the Public Utility Commission would consent to the issuance of more than three million, one hundred thousand of bonds.

There are two other factors that I have given consideration in connection with the amount of the bonds. That would make the percentage of bonds approximately fifty-six per cent of a valuation of five million, five hundred thousand dollars. That is comparable, approximately, with the percentage of indebtedness of many other public utility bonds selling in the State of Pennsylvania.

In addition, if we go up any higher, if it were possible, in the issuance of first mortgage bonds, there would prob-

ably be a tendency on the part of the statistical rating companies to take that into unfavorable consideration, and it is very vital that these bonds secure a favorable rating for their sale.

And the last point, if the percentage of debt is increased [fol. 1342] by the issuance of first mortgage bonds, the bond becomes less attractive, and, consequently, it is probable that we could not pay as high a price for these bonds to the company.

By Mr. Miles:

Q. Now, Mr. Boenning, assuming that three million, one hundred thousand dollars of this five million, five, is raised through the sale of bonds, how in your opinion would the balance of the money be raised, and what would be the probable cost to the company?

A. The balance of the money should be raised approximately in equal ratio, by the sale of preferred stock and the sale of common stock of the company. Shall I cover the cost?

Q. Now, will you tell us what in your opinion the bonds could be sold for, and what in your opinion the classes of stock that you suggest could be sold for?

A. We are prepared to purchase the three million, one hundred thousand first mortgage bonds on the Edison Light and Power Company at a price of 97. We have selected a five per cent coupon and a twenty-year life.

The five per cent coupon is acceptable to the market today. We must make these securities ~~in~~ the market; we cannot [fol. 1343] make the markets; in addition to which, they must be priced at a price to sell below that of other comparable securities, bonds, preferred stock, and the common stocks.

The twenty-year life is also acceptable.

Now, in comparison with other similar bonds, the bond is what we call right in line and could be sold. We had given consideration to a four and one-half per cent coupon, but we find that the investor would rather pay a higher dollar price for the five per cent coupon than a lower dollar price for the four and one-half per cent coupon. Were we to consider the issuance or the purchase of a four and one-half per cent coupon it would mean that the bonds would have to be bought at a substantially lower price. This would mean less money to the company net. Now, it is quite obvious

in a matter of this kind of financing that the more money that can be raised by senior financing, the less costly to the company. That is the reason for the maturity and the coupon rate.

In connection with the price, our price of 97—I am again discussing the bonds—we contemplate a retail figure of 100. [fol. 1344] There is resistance above par to a premium bond in the market today.

Now, in connection with the bonds, the bond would have a percentage of debt of about fifty-six per cent, and would be earning approximately 2.79 times. The only justification there can be for the price of 97 paid the company and the retail price of a hundred—which is a most modest percentage of profit for the banking houses involved—is the fact that these bonds must have a low percentage of debt. They must have ample earnings coverage, they must have a substantial equity following, all enabling them to obtain a favorable rating from at least two of the four recognized statistical services, because these bonds must be distributed in volume. They must not be distributed in five hundred dollar pieces or in small pieces, but they must be made available for purchase by banks and large investors generally. That disposes of the bonds.

We propose—

Q. Now, what have you to say with respect to the cost of obtaining the preferred and common stock?

A. We propose to purchase from the company twenty-seven thousand shares of a fifty-dollar par, three and one-half dollar stock, at a price of  $45\frac{1}{8}$ . This stock would be [fol. 1345] retailed at 48 dollars a share. The stock on a basis at which it is being purchased from the company yields 7.78 per cent. At the contemplated retail price the yield would be 7.29 per cent. The retail price is directly in line and comparable to a number of public utility preferred stocks of operating companies now selling in the State of Pennsylvania.

The low unit cost, that is, the fifty-dollar par, was selected by virtue of the fact that it is a low unit cost and a little bit easier of distribution. Now, this stock must be distributed in small units. Consequently, that tends to make the cost of such distribution greater than would be the case in the bonds, where the distribution would be in volume.

This stock in order to be salable must have investment merit, and, therefore, in the calculation we have made the dividend requirements on this stock are being earned 2.88 times. That is directly the earnings available for the dividends on this preferred. What we call the overall, which consists of the total of the interest charges on the bonds and the dividends on the preferred stock, are being earned 1.70 times. That is satisfactory. That is salable. An investor would buy the stock at the retail price. It has some investment merit and a reasonable assurance of continuity of earning power, and good coverage.

In connection with the common stock we will buy one hundred thousand shares of Edison Light and Power common stock, with a ten-dollar par, at a price to net the company  $12\frac{3}{4}$ ; for suggested retail distribution at 15 dollars a share.

Now, there are two logical places for the sale of an equity common stock of an operating company like this. One of them is usually to a holding company or investment trust, and the other is a distribution to the small investor. Taking up the first point, with the present current agitation against the holding companies it would be impossible in my opinion to dispose of this equity to a holding company. From the investment trust viewpoint I think the investment trust would refuse to buy it because the profit or appreciation possibilities in a stock of this kind are very distinctly limited. We are buying this stock at seven and one-quarter times earnings. At the indicated retail price the investor is asked to buy the common equity stock of a Pennsylvania utility operating company on 8.47 times earnings. He is [fol. 1347] paying 15 dollars a share for a stock earning 1.78 a share. The stock, as I have stated before, has little, in my opinion, opportunity for enhancement in value, and the investor who buys this equity must be fairly sure that he is going to have a continuity of earning power, that he is going to buy it on a reasonable times earning basis, and that the earnings will continue to a point where there can be a satisfactory dividend paid him that will substantiate the price and still leave a fair margin to go back into the surplus of the company.

Q. Now, Mr. Boenning—

A. I have two other points there.

Q. —will you cite some illustrations of bonds, preferred stocks and common stocks of public utilities that are selling



in the open market on a basis comparable to that suggested by you in your testimony here today?

A. This is quite detailed, Mr. Miles. Do you want me to go into it—

Q. Oh, no.

A. —in detail?

Q. I would just cite two or three illustrations.

A. I have selected a list of operating company public utility bonds. According to this schedule I have taken [fol. 1348] two four-per cent coupons, two four and one-half, and four five per cent coupons.

The closest illustration that I can give here is compared with the Northern Pennsylvania Power 5s of 1962. That company is earning its interest charges for the twelve months ending June 30, 1937 2.07 times, as compared with the Edison, proposed Edison Light and Power, which bonds we are prepared to buy, of 2.72 times.

The depreciation property values; in arriving at that I have taken the value of the property and deducted accrued depreciation. The value of that property value in the Northern Pennsylvania Power is approximately seven million dollars, as compared with five million, five hundred thousand dollars in the Edison.

The amount of the mortgage debt outstanding in the Northern Pennsylvania Power is three million, seven hundred and seventy thousand, which is fifty-four per cent of the value, as compared with the Edison of three million, one hundred thousand outstanding, and a percentage of fifty-six per cent.

The current market, on the Northern Pennsylvania Powers is 103. The indicated retail price on the Edison bonds would be par, but, as I stated, we must make our [fol. 1349] bonds to be offered and sold to the public at a price below that at which seasoned public utility bonds are selling.

The Northern Pennsylvania bonds are rated BAA by Moody. It is our definite opinion that the Edison Light and Power in the set-up that we have suggested would command the same rating. So much for the bonds.

I have selected a list of six operating company public utility preferred stocks, currently selling in the market, and in addition five other operating company stocks which are



operating outside of the State of Pennsylvania. If Your Honors please, I will give just one concrete illustration.

Pennsylvania Power and Light seven dollar preferred stock is currently selling in the open market and on the New York Curb Exchange at 91. At that price the yield is 7.69. On the Edison Light and Power our contemplated retail price to the investor was 7.78.

The earnings of the Pennsylvania Power and Light Company for the twelve months ending November 30, 1937 were a trifle over twice; on the Edison Light and Power they ran 2.94.

[fol. 1350] The overall, that is, the coverage of the bonds and preferred, on the Pennsylvania Power and Light for the same period of time, November 30th, were 1.42, as compared with an overall of approximately 1.73 on the Edison. I have taken the net values available for the preferred after deducting all of the funded indebtedness outstanding.

In the Pennsylvania Power and Light Company there is an amount—these are book figures taken from their balance sheet—of sixty-nine million dollars available for sixty million dollars' worth of par value preferreds. On the Edison there is two million, four hundred thousand dollars available for one million, three hundred and fifty thousand preferred.

I am drawing the illustration that the Edison is comparable with a typical Pennsylvania public utility, probably a trifle better, under the illustration given, but, as stated, we must make these securities and offer them to sell below that of seasoned securities in the market.

The comparison on the common stock is rather difficult, and I have selected about six here. It is unfair in my opinion [fol. 1351] to compare the equity earnings or the times earnings on a property with a three million dollar gross or a two million dollar gross, such as, approximately, in this Edison Light and Power property, with that of a company having a gross of possibly twenty times that amount; of a new company, such as the Edison Light and Power Company, as compared with a seasoned common stock which has been selling on some recognized exchange for quite a long time. The Consolidated Edison of New York, as a concrete illustration, earned \$2.17 on its stock for the twelve months ending September 30, 1937. It paid during that twelve months period of time two dollars, so that it yielded the investor eight per cent. The market was around 25, the times

earning, 11, but that company had a gross of two hundred and thirty-four million dollars, which is approximately one hundred times as great as that proposed on the Edison.

As compared with a smaller company, that is, compared with Community Public Service Company, that company earned for the twelve months ending September 30, 1937, a trifle over \$3.50 a share. They paid two dollars last year. The stock at its present selling price of 20 yields the investor ten per cent. It is selling at 5.7 times earnings, and [fol. 1352] had a gross of approximately three million dollars. Now, comparing the Community Public Service earnings per share on common of \$3.52 with \$1.78, the yield of ten per cent on Community with an indicated yield of 9.1 per cent, at a retail price or market price of 20 as compared with 15, and the times earnings of eight and one-half as compared with 5.7 times, if this common stock were to be disposed of to the public or to be disposed of in volume the spread between the indicated purchase price of 12 $\frac{3}{4}$  and 15 would be unwarranted, but this is going to mean disposing of this stock to many investors and in many places, and the cost, therefore, must be necessarily high in such distribution.

In addition, there is considerable resistance on the part of the individual investor today due to increasing taxes, which he always has in the back of his mind, and which he always advances as a buying argument against a utility property, and the possibility—it depends how badly he doesn't want to buy the stock, how much he makes of it—and the possibility of inflation.

Q. Now, have you made any study of the annual operating income or net revenue that the Edison Company would require after the payment of its operating expenses in order to have a sum sufficient to pay its fixed charges on the bonds you have suggested, the dividends on its preferred stock, and leave a sum sufficient remaining available for dividends on common stock and surplus?

A. I have, Mr. Miles.

Q. Now, what is the amount of operating income or net revenue that you feel would be required to meet those purposes?

A. In order to realize the sum of five million, five hundred thousand dollars in cash it is my opinion that the company, after deduction of operating expenses, adequate depreciation and taxes, should have minimum earnings of \$432,650.

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By Judge Dickinson:

Q. How much?

A. \$432,650.

By Mr. Miles:

Q. Have you prepared a summary setting forth the amount of bonds and the number of shares of preferred and common stock that in your opinion could be sold by the Edison Company for the purpose of raising five million, five hundred thousand dollars, and dealing with the prices, yields and percentages to which you have referred?

[fol. 1354] A. I have.

Q. Have you prepared a similar statement on the assumption that the Edison Company was required to raise five million, two hundred and fifty thousand dollars?

A. I have.

Q. I hand you a statement consisting of two sheets, and ask you whether they are the studies to which you referred in your last answer.

A. That is correct, Mr. Miles.

Mr. Miles: I assume that we may be permitted to offer this in evidence, entitled Complainant's Exhibit A.

Mr. Miller: If Your Honors please, we object to the exhibit as based upon an assumed capitalization of five million, five hundred thousand dollars, whereas the Commission's temporary order was based on a finding of rate base of five and a quarter million dollars, five million, two hundred and fifty thousand dollars—

Mr. Miles: Of course, Your Honors—

Mr. Miller:—so that this does not apply to the rate of return in the Commission's order.

Mr. Miles:—if we agreed to the Commission's order as [fol. 1355] to value we would not be here today. The purpose of this exhibit is to show the proper return with respect to the value which we claim is five million, five, and to show the same thing, in all fairness, with respect to that which the Commission claims is five million, two hundred and fifty thousand dollars.

Judge Davis: We will take the evidence, Mr. Miles.

(Statements entitled "Proposed Financing to Realize \$5,500,000 cash to the company based on present security markets" and "Proposed Financing to Realize \$5,250,000 cash to the company based on present security markets" were marked Complainant's Exhibit A. A copy thereof follows:

## COMPLAINANT'S EXHIBIT "A"

## "Company Exhibit

## Proposed Financing to Realize \$5,500,000 Cash to the Company Based on Present Security Markets

	% of Capitali- zation	Prices Paid Company	Suggested Retail Prices	Amounts Paid Company	Annual Interest and Dividends	Times Charges Earned	Per Cent Yield of Securities	
							On Company Price	On Retail Price
\$3,100,000 20-Year 5% Bonds	56.3	97	100	\$3,007,000	\$155,000	2.79	5.24	5.00
\$1,350,000 (27,000 shs.) \$3.50 Preferred— Par \$50	24.5	45-1/8	48	1,218,375	94,500	2.88*	7.78	7.29
100,000 shs. \$10 Par Common	19.2	12-3/4	15	1,275,000	178,000	\$1.78 per sh.	7.14	8.47
Total Proceeds to Company				5,500,375				
Annual amortization of bond discount					428,000			
					4,650			
Total Amount fixed Charges to Company					432,650			

\* Overall annual charges earned on bonds and preferred stock is 1.70 times.

It is assumed that the Company has made provision in its tax liability for assumption of Pennsylvania Personal Property Tax up to five mills on its bonds. No amount provided for refund of various other State taxes that may be necessary.



## COMPLAINANT'S EXHIBIT "A"

1054

## Company Exhibit

Proposed Financing to Realize \$5,250,000 Cash to the Company Based on Present Security Markets

	% of Capitali- zation	Prices Paid Company	Suggested Retail Prices	Amounts Paid Company	Annual Interest and Dividends	Times Charges Earned	Per Cent Yield of Securities		
							On Company Price	On Retail Price	Times Earnings
\$3,000,000 20-Year 5% Bonds	57.1	.07	100	\$2,910,000	\$150,000	2.72	5.24	5.00	
\$1,300,000 (26,000 shs.) \$3.50 Preferred \$50 Par Stock	25.7	45	48	1,170,000	91,000	2.80*	7.78	7.29	
100,000 shs. \$10 Par Common	17.2	11-3/4	14	1,170,000	153,000	1.68 per sh.	6.94		8.33
Total Proceeds to Company				5,250,000					
Annual Amortization of bond discount					404,800				
					4,500				
Total Amount fixed charges to Company					409,300				

\* Overall annual charges earned on bonds and preferred stock is 1.66 times.

It is assumed that the Company has made provision in its tax liability for assumption of Pennsylvania Personal Property Tax up to 5 Mills on its bonds. No amount provided for refund of various other State Taxes that may be necessary.

7.8% overall cost of money.)

[fol. 1358] By Mr. Miles:

Q. Now, Mr. Boenning, this exhibit, as I understand it, shows the percentages of bonds, preferreds and common stock that you have suggested in your testimony, the prices at which it would be sold, and the yields?

A. That is correct.

Q. And you set forth the proceeds that would be received from the sale and the amount of income that would be required to support those securities?

A. That is correct.

Q. Mr. Boenning, have you any opinion as to the effect of the activities of the national administration upon the cost to public utilities of obtaining money from the sale of securities to the public?

Mr. Miller: Objected to, Your Honors. I don't think testimony to that effect is relevant at all on the proper rate of return to be allowed. The company depends upon local conditions peculiar to the territory and operations of that company, and unless this witness is prepared to testify that specific national conditions have had a specific effect upon the local territory of the Edison Light and Power Company we submit his testimony is irrelevant and improper.

[fol. 1359] Mr. Miles: If I may be heard on the question, Your Honors, it seems to me perfectly fundamental that if there is anything that is relevant to the question of return to which a public utility is entitled it is prevailing conditions in the country at the time that contemplated securities would be offered. Now, Your Honors know without me having to argue, and I think Your Honors can at least take judicial notice of the fact because by virtue of Congressional enactment there are federal agencies in this country today competing directly with public utilities, and there are other federal agencies supplying grants and loans to others to compete with public utilities. Now, certainly it seems clear to me that we are entitled to ask an expert—and this gentleman is offered in that capacity, as a banker and an expert dealer in securities—what effect, if any, those activities have had upon the investing public, because that is where we have to go to raise our money, and the activities of the national administration or anything else which affect the public markets we submit is clearly admissible.

Mr. Cohen: If Your Honors please, the gentleman has [fol. 1360] just testified as to the sale of the bonds, the sale

of the preferred stock, and the sale of the common stock, and he has indicated with his expert knowledge what moneys they could receive. Now, I cannot see the relevancy of this further testimony, because he already has testified what money would be accruing to the Edison Company on the sale and the disposition of these securities, and he has given that as his opinion.

Mr. Miles: And we say he is entitled to support that opinion by any factors that enter into it.

Judge Buffington: Just wait, Mr. Miles.

Mr. Cohen: And if that might be a factor that came in to his conclusion, nevertheless, he based all his factors upon similar sales of similar issues in the Commonwealth of Pennsylvania. We have the answer from this expert right here, without going into a lot of extraneous matters, most of which the Court can take judicial notice of.

Judge Buffington: Well, Mr. Cohen, it seems to us that the attitude of an administration, either national or state, might affect the marketing of securities.

Mr. Cohen: That is very true, but we already have that answer, Your Honor.

[fol. 1361] Judge Buffington: Well—

Mr. Cohen: He has already testified—

Judge Buffington:—we will hear it. We will take it in less time than we can argue about it. Proceed.

A. The general unfriendly or hostile attitude of the Federal Administration and the specific acts and activities of the Federal Administration have had a most adverse effect on the ability of the public utility companies to raise money. This is true not only with the companies that directly come under the scope or within the zone of the Government activities, but throughout the entire country. In the past approximately six months there has been practically no public utility financing of any character except that of some of the highest grade issues, which have been almost entirely bought by large institutions, such as insurance companies or banks. There has been a negligible amount of junior financing either in the form of preferred stocks or of common stocks. The definite activities of the TVA, which in my opinion are simply subsidized competition by the Government—

By Judge Davis:

[fol. 1362] Q. Well, now, haven't you answered the question?

A. I think so.

Q. All right.

A. I can give you one illustration, Your Honor.

Q. No, I think you have answered the question.

By Mr. Miles:

Q. Now, have you any opinion as to the effect of the activities of the Pennsylvania Public Utility Commission upon the cost to utilities of obtaining capital in the public markets?

Mr. Miller: We object to that, for the same reasons, Your Honors.

Judge Davis: Yes, and the same ruling.

Mr. Miller: We would like an exception—

Judge Davis: Yes.

Mr. Miller: —to our objections, and testimony taken subject—

Judge Davis: Well, you may have an exception.

A. Shall I answer the question? The situation in Pennsylvania as far as the reaction toward the buying public in connection with the public utility securities of operating [fol. 1363] companies has been even more adverse than those operating outside of the State. I speak from the reaction directly from investors that we talk to. This is not only from those who are responsible for the investment of large sums of money, such as trust companies or trust funds, but down to the smallest investor. They are fearful of two things. They are fearful of the enactment and the power contained in the new public utility law, and they are fearful of the actions or the possibility of unfavorable action on the part of the Commission itself.

Two illustrations—

Judge Davis: I think you have answered the question.

The Witness: Yes.

Mr. Miles: That is all, Mr. Boenning.

Cross-examination.

By Mr. Miller:

Q.: Mr. Boenning, are you familiar with the testimony taken before the Commission in this proceeding?

A. I have read it over, Mr. Miller. I am not familiar with it entirely.

Q. Did you read the sections relating to rate of return? [fol. 1364] A. I did not. If I did I would not be sufficiently conversant with them to pass on it.

Q. You don't know what is in that record, placed in the record by the Complainant here, as to rate of return?

A. I do not.

Q. Now, you stated that you had underwritten certain security issues, among them the Wayne Sewerage Company security issue. Was that an ordinary underwriting transaction?

A. We bought the property as a firm from the old American Pipe and Construction Company, which was owned by Mr. Clarence Geist. Mr. Geist owned jointly the Wayne Water Works Company and the Sewerage Company, and for very good reasons he did not like the association of the two, and we, therefore, bought the Wayne Sewerage Company, paid for it in cash, and sold the bonds to the public.

Q. Then that was a case of issuance of the securities to a construction firm, and you purchased from the construction firm and sold to the public?

A. That is correct; the title of it happened to rest in the American Pipe and Construction.

Q. Now, you testified as to what in your opinion rating companies would do and the manner in which they would [fol. 1365] regard a financing transaction in connection with the Edison Light and Power Company. What investigation did you make to determine the attitude of rating companies?

A. We have had considerable experience with the rating companies—

Judge Buffington: Would you mind turning your face around this way—

The Witness: I am sorry.

Judge Buffington: —without disrespect to counsel?

Mr. Miller: That is quite all right, sir.

A. (Continued.) We have had considerable experience in knowing approximately how their minds run in making up their ratings for any particular bond issue. If the percentage of debt, as I stated in the testimony, becomes too high, if the coverage of interest on the bonds gets below a certain normal standard, or if the equity is not sufficiently great in their opinion, and that coupled with other factors, such as the character of the territory, whether it is stable or not, more particularly the record of the earnings and the



continuity of the record of earnings over the period past—such factors generally enable me to state in my opinion that this bond under these conditions would command a BAA [fol. 1366] rating by Moody's, which is sufficient to enable them to be eligible for purchase by banks.

By Mr. Miller:

Q. Now, you stated that the Northern Pennsylvania Power Company in your opinion was a company which was comparable, and closely comparable, to the Edison Light and Power Company, did you not?

A. Correct.

Q. And would that statement also apply to the Pennsylvania Power and Light Company?

A. No, the Pennsylvania Power and Light Company have a better rating. They have one hundred and twenty million dollars' worth of debt outstanding, as compared with three million, one hundred thousand. They cover a much more diversified territory. I don't think, Mr. Miller, that the two bonds are comparable. Moody's rating on the Pennsylvania Power and Lights is A, as compared with a probable BAA.

Q. Now, in your opinion do local conditions and the character of territory affect the rate of return?

A. You mean local in York County, Mr. Miller?

Q. Yes, as applied to this company locally, in Allentown, or the Pennsylvania Power and Light Company area, in the [fol. 1367] case of that company, and similarly of other utilities.

A. The character of the community would definitely have a bearing on the value of its securities, yes. Do I answer your question, if I understand it correct?

Q. No, does it have a bearing on the rate of return, or would your answer to that question be "Yes"? If it has a bearing on the value of the securities it would have a bearing on the proper, allowable rate of return, would it not? Will you just answer that?

Judge Davis: If you shake your head the stenographer can't hear you, Mr. Boenning.

The Witness: Pardon me?

Judge Davis: If you shake your head the stenographer can't hear that.



The Witness: Would you mind stating the question again?

Judge Davis: The stenographer will read it.

Mr. Miller: The stenographer will read the question.

(The question was repeated by the Reporter, as follows:

"Q. No, does it have a bearing on the rate of return, or would your answer to that question be 'Yes'? If it has a [fol. 1368] bearing on the value of the securities it would have a bearing on the proper, allowable rate of return, would it not? Will you just answer that?"

A. In answering that, you mean the rate of return on the bonds, that the bonds would sell at a higher figure, or are you considering, Mr. Miller, the rate of return on the property itself?

By Mr. Miller:

Q. I am considering the rate of return on a property itself.

A. The answer is, yes.

Q. Well, now, taking the bond financing, would it have an effect on that?

A. Yes.

Q. And on the preferred stock financing?

A. Correct.

Q. And on the common stock financing?

A. Yes.

Q. Have you investigated the local conditions in the York area, the area served by the Edison Light and Power Company?

A. I know them generally, Mr. Miller. We have a man who until the last two years has been a salesman and a representative of ours stationed in York, so we rather had first- [fol. 1369] hand information concerning conditions generally up there of a financial character. Since that time he has left our employ, but our relationships are very close.

Q. Do you know whether that area is highly prosperous or is not highly prosperous?

A. At the present time I would think that it was not highly prosperous. I understand that there are a number of the cigar factories and other local factories closed down.

Q. Where did you obtain that information?

A. From this former representative of ours in York.

Q. And when did you obtain that information?

A. Within the last two weeks.

Q. Did he give you any information relative to the York Refrigerating Company, the York Ice Machinery Company?

A. Nothing specific concerning that, although I am informed from other sources that their business is running along in very excellent shape.

Q. Did he mention any other adverse factors other than the decline in cigar manufacturing?

A. Some of the other smaller manufacturing companies he said were either working on part time or closed up entirely.

[fol. 1370] Q. Do you know how many consumers per square mile the Edison Light and Power Company has?

A. I don't know, Mr. Miller.

Q. Do you know how many consumers per mile of line?

A. I do not, I have never—never figured the calculation.

Q. Do you know the conditions under which the Edison Light and Power Company secures its supply of power?

A. I do.

Q. What are those conditions?

A. On contracts expiring in 1945, I think is the date, they obtain approximately half of their power requirements from a subsidiary—I think it is the Holtwood Power Company—a subsidiary of the Pennsylvania Water and Power Company, and the other approximate half from the Metropolitan Edison. I think the ratio, Mr. Miller, it about forty-sixty; I said approximately fifty-fifty.

Q. Have you made any personal investigation of the conditions in the Edison Light and Power territory in preparation for presentation of the testimony you have given today?

A. I have not.

Q. Then I presume you are not prepared to state what, if any, effect national or state governmental action by any [fol. 1371] agency of government has had upon local conditions in the York area?

A. I think—I think it has had a vital effect, Mr. Miller.

Q. Well, did you make any investigation to determine—

A. Well, you are asking—

Q. —whether it had any effect at all or not?

A. That would affect all public utility companies generally, regardless of whether they came under the scope, as

I testified, of the Government activities or without. It is reflected in the cost of money today to the public utilities.

Q. Would it affect the Philadelphia Electric Company?

A. Not as much as a smaller system. That is a well integrated, large operating company, and operating in a density of population, as compared with a company that didn't have nearly as many consumers per square mile.

Q. Well, you cannot be comparing that with the Edison Light and Power, because you don't know the density of their territory, do you?

A. That is correct. There is no comparison in any event, on account of the size of the company and the situation.

Q. Can you tell me whether the company in the past few [fol. 1372] years has earned this \$432,650 that you state should be available for return?

A. If the figures that I have, if we are talking the same net income figures, Mr. Miller, I think those figures have been exceeded in 1935, '6 and '7.

Q. By how much, can you tell me?

A. I can give you the actual figures if you would like it. For the twelve months ending September 30, 1937 the item carried here as "Balance of income" is five hundred and thirty thousand dollars. That item was five hundred and sixty-eight thousand dollars in 1936, and six hundred and twelve thousand dollars in 1935.

Q. Well, now, you say the "item carried here". What does "here" mean?

A. That is after provision for taxes, after depreciation, and after one deduction, interest on unfunded debt, which is practically constant during the whole of those three years.

Q. Was a deduction made from operating expenses for rate case expenses in that computation?

A. I cannot tell.

Q. Where did you secure that?

A. I obtained it from the company.

Q. You made no investigation to determine the accuracy [fol. 1373] or the basis for those figures, did you?

A. I did not.

Q. Did you make any investigation behind any figures supplied to you by the company?

A. These were the only papers that I know, with the exception of the balance sheet as of September 30th, supplied by the company.

Q. In other words, so far as the operations of the Edison

Light and Power Company are concerned you relied upon figures supplied to you by the company?

A. That is correct.

Q. Without an independent check?

A. That is correct.

Q. Have you made any investigation as to the actual cost of financing of the Edison Light and Power Company?

A. I think that is all explained definitely in that exhibit, Mr. Miller.

Q. No, I mean the actual cost, if any, incurred on that account.

A. In making up that schedule there has been no provision made whatever for any registration expenses, or engraving of certificates, attorneys fees, or anything of that character. That is a non-recurring charge in the event of financing, and my figures are based on an annual earnings basis.

[fol. 1374] Q. Yes, but you testified that the bonds would be purchased, would be taken by you at 97 and sold at one hundred.

A. That is correct.

Q. Now, that would be a three per cent cost of financing, would it not?

A. Oh, you are figuring that way—yes.

Q. Well, now, did you make any investigation to determine the actual experience of the Edison Light and Power Company as to cost of financing? Of course, they don't have any bonds, but I mean as to the issuance of the stock, did you make any investigation in that regard?

A. I am taking into account comparable situations, Mr. Miller.

Q. Did you make any investigation as to the actual experience of the Edison Light and Power Company?

A. No, they have had no experience. They are a wholly-owned subsidiary.

Q. And they have experienced no cost of financing?

A. Not up to date. I don't think they have ever done any public financing. If it has, it has been so long ago—

Q. No, well, you will just answer my question, if you will, [fol. 1375] please. Have they experienced any cost of financing?

A. No.

Mr. Miller: That is all I have.

# Redirect examination.

By Mr. Miles:

Q. When you stated that the company has experienced no cost of financing are you referring to cost experienced by it in connection with the public sale of securities?

A. That is correct, Mr. Miles.

Mr. Miles: That is all.

# Recross-examination.

By Mr. Cohen:

Q. Just one further question, Mr. Boenning. There are presently outstanding what extent of York Railways bonds?

A. Approximately five million, par value.

Q. Five million dollars par value?

A. That is right.

Q. And the title, the ownership of those bonds—or, put it the other way, the ownership of the Edison is in the—Edison stock—is in the hands of the trustee for the bondholders, is that correct?

A. That is correct.

Q. And under that trust agreement, as you know it, the [fol. 1376] bondholders in reality own at the present time—in theory, at least—the stock of the Edison Company and could utilize the Edison Company stock to liquidate the indebtedness of the bondholders, is that correct?

A. That is theoretically correct.

Q. All right. Do you know at what price the bonds are now selling?

A. In the early 80's; I think about eighty-five, Mr. Cohen.

Q. Do you want us to understand that you are here as an expert both in public utility financing and in banking, Mr. Boenning, and that you are cognizant with the Edison Light and Power Company and its intercompany relationship? Is that your function at this hearing, Mr. Boenning?

Mr. Miles: Now, Your Honor, I object to that sort of question.

Judge Davis: No, he knows whether he is here as an expert or not.

Mr. Miles: No, but not as to the familiarity with the intercompany relationship.



Judge Davis: Well, let him answer the question.

The Witness: Will you repeat your question, Mr. Cohen?  
[fol. 1377] Judge Buffington: Just read it.

(The question was repeated by the Reporter as follows:

"Q. Do you want us to understand that you are here as an expert both in public utility financing and in banking, Mr. Boenning, and that you are cognizant with the Edison Light and Power Company and its intercompany relationship? Is that your function at this hearing, Mr. Boenning?")

A. I am generally familiar with such conditions.

By Mr. Cohen:

Q. And being familiar and being called as an expert for the Edison Company, do I understand that you say that the bonds of the York Railways, which theoretically; now, hold the title to the stock of the Edison Company, are selling between 80 and 85? You so have testified, have you not?

A. That was my statement, that I thought that was the approximate market. I haven't followed the market—

Q. You haven't followed it?

A. —closely on those bonds.

Q. Then you are not such a good expert?

A. Maybe I haven't looked at the paper lately, Mr. Cohen.  
[fol. 1378] Q. Well, now, I will show you the paper. You are familiar with the Commercial and Financial Chronicle, are you not?

A. Yes, sir.

Q. Do you know on what exchange the York Railways bonds are selling?

A. New York Curb Exchange.

Q. That is right. You would accept this as an accurate representation of the selling price of the York Railways bonds, would you not?

A. On the date specified, I would.

Q. I show you the Commercial and Financial Chronicle, of New York, January 8, 1938, on page 275, and ask you at that time what were the bonds of the York Railways Company selling for.

(The paper was shown to the witness.)

A. The market quoted at that time was 70 bid; offered at 71.



By Mr. Cohen:

Q. That is a long way from 80 to 85, is it not?

A. The last time I looked at the bonds, Mr. Cohen, the bonds were selling at around 85.

Q. When was that?

A. It was before that time, I think some time in the early [fol. 1379] part of December or latter part of November. I haven't followed their prices since that time.

Q. Then the ultimate consumers, the market for the ownership of the Edison, on five million dollars of outstanding bonds are at the present time taking a mark-down of some thirty per cent, are they not?

A. That is theoretically correct, yes.

Q. Therefore, the consumer, or, rather, the purchaser of the Edison property is not valuing the property at five and one-half million dollars, but is valuing the company at four million, five hundred thousand dollars.

A. Those bonds happen to be overdue bonds, Mr. Cohen, and as such—

Q. But they still represent the ownership of the Edison property, do they not—

A. The company—

Q. —overdue or not overdue?

A. The title to the ownership of that stock as far as I know has not changed, but the fact that they have become due and were not paid would seriously affect their market value.

Q. And that is leaving out, also, in the value the ownership of the York Steam Heating Company and the ownership of the York Railways Company, which is also subject [fol. 1380] to the lien of the bonds—

A. Correct.

Q. —is that correct, and the York Bus Company?

(The witness nodded assent.)

Judge Davis: The answer is "yes".

Mr. Cohen: The answer is "yes".

By Mr. Cohen:

Q. Now, this estimate of value of five and a half million dollars was an estimate that had been given to you by the company, was it not?

A. No; by Day and Zimmermann.

Q. By Day and Zimmermann, and the estimate of the operating expenses, were they given to you by Day and Zimmermann?

A. The operating expenses were included in the statement given me by the company.

Q. By the company. You have no knowledge as to the veracity or the authenticity of those operating expenses, have you?

A. I have not.

Q. You have not.

Mr. Cohen: That is all.

By Mr. Miller:

Q. Mr. Boenning, just let me clear up this point as to [fol. 1381] cost of financing. The Edison Light and Power Company has never incurred any cost of financing aside from possible mechanical costs either in relation to public sale of securities or private transfer, has it?

A. Not to my knowledge, Mr. Miller.

Mr. Miller: That is all, thank you.

Redirect examination.

By Mr. Miles:

Q. Now, Mr. Boenning, these bonds that Mr. Cohen talks about selling around 75 or 80—

Mr. Cohen: Just a moment, I didn't talk about the selling price, Mr. Boenning talked about the selling price.

By Mr. Miles:

Q. What is the price that you have assumed that the Edison Company would get for the bonds, in your direct testimony?

A. As I have stated, we are prepared to pay 97 for a first mortgage, twenty-year, five per cent coupon, amounting in principal to three million, one hundred thousand dollars.

Q. Now, assuming, in line with counsel's cross-examination, that the property of this company was only worth four million, five hundred thousand dollars, could you support [fol. 1382] three million, one hundred thousand dollars of bonds?

A. I think not.

Q. You would have to sell more preferred and common stocks?

A. You would have to change your ratios downwards in all cases.

Q. And would that be considerably more costly to the company?

A. Without a doubt.

Mr. Miles: That is all, sir.

#### Recross-examination.

By Mr. Miller:

Q. It would be costly in the cost of financing, but not in the rate of return, would it, Mr. Boenning?

A. You are asking me—

Q. Yes.

A. Mr. Miller, I am not concerned in this matter with the rate of return, I am simply concerned with the sufficient number of dollars existing after proper operating expenses, proper depreciation and taxes that will support a financial structure sufficiently attractive to be sold to the public.

Mr. Miller: That is all.

[fol. 1383] Judge Buffington: We will take a recess until half past one.

(Recess, 12.30 until 1.30 o'clock P. M.)

#### After recess

Present: Counsel as before noted.

Judge Davis: Now, Mr. Miles, how many more witnesses have you?

Mr. Miles: I have three, Your Honor.

Judge Davis: How long is it going to take to examine them?

Mr. Miles: Well, I should say their direct examination, two of them would run about thirty minutes each, and the other one about five or ten minutes.

Judge Davis: And, Mr. Miller, do you have any witnesses?

Mr. Miller: We will have one witness, Your Honor.

Judge Davis: And how long—

[fol. 1384] Mr. Miller: At least.

Judge Davis: —will it take you to get through with him?

Mr. Miller: I think about fifteen minutes.

Judge Davis: Well, that is fine. We would like to surely get through by four o'clock. If you will just jog along good and fast—

Mr. Miles: We certainly will do the best we can, Your Honor.

Judge Davis: We would appreciate it. All right.

GEORGE H. KNUTSON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Miles:

Q. Mr. Knutson, will you please state your full name, residence and occupation?

A. George H. Knutson. I live in Manhattan. I am in business in Manhattan as a consultant on public utilities and industrials.

Q. Now, what is the nature and scope of your activity as a consultant with respect to public utilities?

[fol. 1385] A. I am concerned with all problems, management, operations, engineering, construction and financing, rate work, and general economic problems of public utilities and industrials.

Q. Now, have you had any experience in connection with the preparation of inventories and operating studies of public utilities?

A. Yes, sir.

Q. What has been the nature of that experience?

A. Well, I have been in the business all my life. I was graduated in 1908 from the University of Michigan, and I have been in the public utility business in engineering, construction, operation and management and finance from then until now.

By Judge Buffington:

Q. University of what?

A. Michigan.

Q. University of Michigan?

A. Yes, sir.

By Mr. Miles:

Q. Were you in the past connected with any financial institutions?

A. Yes, sir, I was with the Harris Trust—

Q. Little longer, Mr. Knutson.

[fol. 1386] A. I was with the Harris Trust and Savings Bank in Chicago as their economic man, and had to do with the set-up of all financing that they did during the years I was with them. That covered thirteen or fourteen public utilities in as many different States, with total assets of over seven hundred millions, and my job was to pass upon the issue and the amount, the time, how it should be set up to market, the trust indentures, the sales scenery, the provisions surrounding it; dovetail and act as a hub for expert reports, accountants, engineers and investigators and appraisers, and set the issue up in amount-ready for the sales department, and put a price on it at which it would be sold to the public, and then I usually sold the issue to the salesmen, doing economic work in connection with that, management, operation, territory, finances, credit with the community, with the public service regulatory commissions, and what not.

Q. Now, Mr. Knutson, have you had any experience in an executive capacity on any public utility corporations?

A. Yes, in 1930 I went as vice-president of the Central Public Utility Corporation, which had one hundred and seventy-two operating properties in the United States and foreign countries, and my job there was management and [fol. 1387] operation and finances.

Q. Now, are you generally familiar with the properties and business of the Edison Light and Power Company?

A. Yes, sir.

Q. Have you actually inspected the property of the company?

A. Yes, sir.

Q. Have you had occasion to look into its earnings for calendar years 1935, 1936 and 1937?

A. Yes, sir.

Q. Have you had occasion to examine its balance sheet as of September 30, 1937?

A. Yes, sir.

Q. Now, Mr. Knutson, having in mind your past experience as a utility executive, your experience in connection



with the purchase and sale of public utility properties and securities, and having particularly in mind the property, business, earnings and financial condition of the Edison Light and Power Company, will you please state what rate of return is in your opinion necessary for the company to be permitted to earn—

A. A minimum of—

Q. —on the fair value of its property in order to insure an efficient and economical operation of its business at reasonable rates.

Mr. Miller: Objected to. That is a matter for the Commission or the regulatory body or the Court to determine. It is a matter of judgment, and is not a matter for the witness to express an opinion upon. I have no objection to the witness stating the factors which will enter into the solution of the problem, that will inform the Court so that it may arrive at a proper conclusion, but I object to the witness stating a conclusion.

Judge Davis: Well, he is an expert. We will hear what he has to say, and give you an exception, and consider it as expert testimony in which he is expressing an opinion, merely.

A. A minimum of eight per cent during this period.

By Mr. Miles:

Q. Now, will you summarize the factors or considerations which have entered into your mind in reaching your conclusion that eight per cent is the required rate of return for this company?

A. Well, the rate of return is the wages of capital, and has to be an amount earned sufficient to interest capital in an enterprise, and everything in connection with the enterprise has to be taken into consideration in order to [fol. 1389] interest this capital. The hazard involved must be considered, the substantial ratio and history of the property, whether or not the requirements for money are great, and whether or not they can be raised, with the capital interests that do have their money in it, whether or not the property is in good territory, substantially, whether there is a great deal in your change of art which has to go through, requiring additional capital, whether or not the business will go up and down, or whether it will be fairly stable, something to do with the cost of money and how it repre-



sents the values involved at the time, and practically everything which would say that the earnings are sufficient to attract capital over a period and insure not only a substantial return, but give a security representing that capital which will be fairly liquid and something that a person could dispose of if they required, under reasonable circumstances.

Q. Now, Mr. Knutson, have you any opinion as to the effect of the activities of the national administration upon the cost to public utilities—

A. Yes, I have.

Q. —of acquiring capital.

Mr. Miller: We make the same objection.

[fol. 1390] A. Yes, I have.

Judge Davis: Yes, and you may have an exception, Mr. Miller.

A. (Continued.) Well, the Government-subsidized competition, which we have represented by TVA, and PW, and the rural electrification, I mean, is something which is very serious in thinking about raising capital for public utilities at this time, because, naturally, we have to think about the competition and whether our principal amount is going to be wiped out and lost; and where we have a forty-five per cent grant and a great many other emoluments against us it is going to be very difficult to compete against that, and, naturally, we would not look with as much favor upon investing money in a public utility today as we would if these public utilities subsidized competitive agencies were not in effect.

By Mr. Miles:

Q. Now, have you any opinion as to the effect of the activities of the Public Utility Commission of Pennsylvania—

A. I have also—

Q. —upon the cost to Pennsylvania public utilities of acquiring capital?

[fol. 1391] A. Yes.

Mr. Miller: Same objection.

Judge Davis: Yes, you may have an exception; overruled.

A. (Continued.) Well, it is the actual fact that I am sure every investment banker will agree to that it is more expensive to raise capital for public utilities in Pennsylvania today than it was before this act was put into effect. We here really have the Legislature delegating powers to a commission, in which they can set a temporary rate, which for all purposes can be continuing for any time, and that rate can be sufficient to earn only a five per cent return on the depreciated original cost of the physical property—assets, really, they mean; I think the word is “physical assets”—and, of course, that does not assure any continuity of revenue for the capital that I would put into a public utility in Pennsylvania.

Now, as to the comments that we have, the public press and the investor go hand in hand, and the investor is met—and when we raise capital we always think of the investor, of course, and these comments do not lead to cheaper money for the public utility in Pennsylvania—

[fol. 1392] Mr. Miller: Now, I object if the witness is going to read comments from some unidentified paper.

The Witness: I will identify it.

Mr. Miller: I can't see that that is relevant.

Mr. Miles: He is about to identify it.

The Witness: I will identify that. We have the Moody's Public Utilities, page 1962, on 8/4/37—

By Mr. Miles:

Q. You mean on August 4, 1937?

A. That is correct.

Q. And what is Moody's Public Utilities?

A. That is one of the four or five substantial, well-known financial services which the financial people consider when they think about raising capital:

“According to press reports of July 31, 1937, Richard J. Beamish of the Pennsylvania Public Utility Commission has stated that every electric power company in the State is overcharging for service and that the Commission will seek lower rates for users of electricity.”

By Judge Davis:

Q. Well, now, Mr. Knutson, you are not passing on the truth of that statement—

[fol. 1393] A. No.

Q. —at all, as to whether Mr. Beamish made it or did not make it——

A. No, sir.

Q. —but only upon its effect——

A. That is correct.

Q. —upon the securities——

A. Yes, sir.

Q. —and financing?

A. And the cost of raising money and rate of return.

Mr. Miller: We submit it is perfectly irrelevant unless it is shown that it has had an adverse effect upon conditions which would govern the financing of the Edison Light and Power Company. Even supposing the statement to have been made, and even supposing that Moody quoted it correctly, it would have to be related to the particular matter before the Court to be relevant, we submit.

Judge Davis: Well, that is an element that we might consider, Mr. Miller, so we will admit it and grant you an exception.

A. (Continued.) The Philadelphia Inquirer on Friday, July 30, 1937, carried the following story, headlined "Promises Lower Rates":

[fol. 1394] "Harrisburg, July 29.—Every electric power company in Pennsylvania is overcharging for services and all will be 'run through the Public Utility Commission's wringer' to squeeze out lower rates for users of electricity, Richard J. Beamish, P. U. C. member said today."

Mr. Miller: Well, now, we object to headlines quoted from newspapers, for the same reasons that we have already advanced.

Judge Davis: Yes; objection overruled, and we will grant you an exception.

A. (Continued.) The article follows:

"Beamish, who will sail August 19 to study utility service in England and Sweden, indicated the commission would issue orders within three months for drastic cuts in charges of Pennsylvania Power and Light, Allentown; Philadelphia Electric, West Penn Power, Allegheny county and the Metropolitan Edison, Reading."

Mr. Miller: I would suggest that the Edison Light and Power Company isn't mentioned.

A. (Continued.) Other articles by those statistical services, all of which have an influence upon the investing public and the cost of money to any public utility in Penn- [fol. 1395] sylvania—

By Mr. Miles:

Q. Now, Mr. Knutson, without interrupting you at that point, but for the record, these publications that you are about to refer to, are they publications that are distributed generally among investors—

A. Yes, sir.

Q.—and among bankers and financial institutions?

A. Yes, sir, all over the United States, and probably in foreign countries, and are issued almost daily, and are really the cross sections that these statistical services through their media all over the United States use in arriving at information which they give to the investing public as to whether or not this class or that class of security or stock is or is not a good thing to buy or sell or to hold.

“Also weak pricewise have been several bonds of utility companies operating in Pennsylvania because of indications that the new public service commission probably will order sizeable rate cuts.”

This is from Standard Statistics, page 2186, 5/15/37.

Mr. Miller: Same objection.

Judge Davis: Same ruling, and exception.

[fol. 1396] A. (Continued.) “In commenting on Securities of Associated Electric Company, Standard tempers its favorable comments by ‘However, some uncertainty is created by the likelihood that the new Pennsylvania Commission will make vigorous efforts to obtain sizeable rate reductions from operating utilities. Advise postponing new commitments.’”

By Judge Davis:

Q. Now, Mr. Knutson, I see you have quite a batch in your hand there.

A. Well, they all have to do, Your Honor—

Q. They are a similar line, are they?

A. Yes, showing that they should not—they should either sell their securities or hold them.

Judge Davis: Now, Mr. Miles, do you think it is necessary to go through all these?

Mr. Miles: No, sir, we do not, Your Honor.

By Mr. Miles:

Q. Now, there are numerous articles appearing in Standard Statistics and Moody's and other publications of that character, are there not?

A. Yes, sir.

Q. Now, Mr. Knutson, have you been in the court room throughout the testimony of Mr. Boenning, and if so, did [fol. 1397] you hear that testimony?

A. I did.

Q. Will you state whether or not in your opinion the Edison Light and Power Company could sell its securities in the principal amount of five million, five hundred thousand dollars on any basis more favorable than that suggested by Mr. Boenning?

A. That is substantially the basis that I think would be correct, at this period.

Q. Mr. Knutson, Section 310 of the Public Utility Law of Pennsylvania empowers the Pennsylvania Commission to prescribe temporary rates from time to time, and which rates may continue in effect for a lengthy period; the law further empowering said Commission to limit the earnings of utilities to a sum equivalent to five per cent on the depreciated original cost of the physical property devoted to the public service. Will you please state whether or not in your opinion such rate making powers has any effect upon the cost experienced by Pennsylvania public utilities in obtaining capital.

Mr. Miller: Objected to. The form of the question quotes the law as providing that temporary rates may remain in effect for a long period of time. The section does not say that at all.

[fol. 1398] Objected to, further, since the section interpreted in line with the Constitution will not permit the imposition of confiscatory rates, regardless of five per cent, original cost depreciated, or any other lower limitation.



Judge Davis: Mr. Miles, I think you will have to reframe your question, and if you are going to quote the section you will have to quote it correctly.

Mr. Miles: Your Honor, I was not attempting to quote the section of the law.

Judge Davis: I know, but Mr. Miller says you are giving an erroneous impression by misquoting it.

Mr. Miles: Well, of course, if Your Honor doesn't want to hear me on that I won't reply to Mr. Miller, but I don't think I am giving any erroneous impression. There is not a line in the statute which limits the length of a temporary order, which is one of the bases of our attack upon its constitutionality; that these orders, so-called temporary, can be continued into effect for a lengthy period.

Judge Davis: Well, I understand that, but you intimated, and I think it would be a fair inference from what you said, that it did provide for a long time.

[fol. 1399] By Mr. Miles:

Q. Mr. Knutson, Section 310 of the Public Utility Law of Pennsylvania empowers the Pennsylvania Commission to prescribe temporary rates from time to time, the law further empowering such Commission to limit the earnings of the utilities to a sum equivalent to five per cent on the depreciated original cost of the property devoted to the public service, and to fix so-called trial rates. Will you please state whether in your opinion such rate-making power affects the ability of Pennsylvania public utilities to attract capital, and the cost of the same?

A. It does affect it, and makes the cost of attracting capital more expensive.

Q. Now, why do you say that? Why is that your opinion, Mr. Knutson?

A. The very fact that a temporary rate can be entered really, in effect, destroys the substantialness of the earnings of the industry in question, and capital is not attracted to something which today has a certain earning power, and tomorrow may have half as much or a third as much, or ninety per cent of it, and have that power in the hands of just one body that can put that into effect, and have no relativity with the economics throughout the country, it [fol. 1400] is just an arbitrary statement or an opinion that someone is going to do something, and that will very



seriously affect the cost of money to any public utility operating in Pennsylvania, and any investment banker today considering an issue of any kind of securities will have to have more for selling it if it is in Pennsylvania than out of Pennsylvania, with this law in effect and this Commission with its powers.

Q. Now, Mr. Knutson, assuming that as a result of such a temporary order a utility for a period of three or four months was not permitted to earn a sum sufficient to take care of its normal maintenance or replacement requirements, but that thereafter the Commission fixed permanent rates that allowed a sum sufficient for such requirements, please state whether in your opinion, and based on your experience in connection with the operation of utilities, the maintenance or replacement work so deferred would be more costly to the company in question.

A. It would be more costly.

Q. Now, one more question, Mr. Knutson. Subparagraph (e) of Section 310 of the Pennsylvania Public Utility Law provides that on fixing a permanent rate the Commission must consider the effect of the temporary rate, and if upon final determination the permanent rate is in excess of the [fol. 1401] temporary rate theretofore in effect the utility shall be allowed a temporary increase in excess of the final rate and be permitted to earn such sum as shall represent the difference between the gross income obtained from the rate prescribed in such temporary rate and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

Now, I ask you, assuming that a temporary rate confiscatory in character is fixed by the Commission and the same remains in effect for a period of four months before the determination of reasonable final rates, will you please state what, if any, damage or injury may inure to the company in question during the period such temporary and confiscatory rate is in effect?

A. It might have very serious effect upon the corporation. In the first place, it might totally destroy its credit to raise money for necessary construction expenditures required for the utility to make and to have in order to take care of the business at hand, and to give adequate and proper service to the consuming public.

Now, it will be more expensive in operations to the utilities in that the billings will have to be changed twice as against once.

[fol. 1402] It will ruin, to a great extent, the good relations that the public utility in this case has in this territory, because if I were a consumer today and I sat with a low rate, which had been given me, and I thereupon went out and purchased stoves, electric stoves, space heaters, water heaters, and so on, thinking that I was going to enjoy this rate, and then four months' time after I get my equipment in, but not paid for, I find that my rate is "upped" so it is maybe twice what it was, I am going to be greatly dissatisfied. I will run down to the company, the company will have to furnish me with evidence and advice and consultation—and which will require money on the part of the expenses—and I will be a disgruntled customer.

If, for instance, again, the company is required to make fifty or a hundred thousand dollars' worth of repairs, now, it has been operating, as all good public utilities should operate, under a budget of construction, and they take up the budget, and that having been made six months ago, the manager of this company and the people in charge would figure that this date they are going to have available fifty or a hundred thousand dollars to make that expenditure for [fol. 1403] maintenance. They wouldn't have it with this cut which they didn't know anything about, and which was put on them maybe a month or two before. They would be greatly upset as to whether or not they could pay for the material which they had ordered in the way of poles, lines, generating equipment, or what not, and it might be very embarrassing to raise that money at the time on the credit of the utility. That might ruin its credit all over, and with that would go down the price of its securities. Maybe the charges that were required to be earned on any securities which might have been outstanding in the hands of the public would not be sufficient to qualify this, it might be taken out as legal savings bank investment, and the whole credit of the company given a black eye.

Now, we in the public utility business think that our credit is one thing that we cannot revivify in a minute. If it has gone wrong it takes a long time to get it back. It takes a very short time to ruin it. And we also think the public relations that we have with our consumers is our greatest

asset, and if we cannot keep our consumers satisfied we certainly cannot be satisfactory and do an operating job and make money for everybody and give the investing public [fol. 1404] as well as the consuming public what they ought to have and what they expect to get; and we cannot give them satisfactory service if we are not sure of some stability of rate return and earnings, I mean on the capital invested over a period of time.

Another thing we have to contend with is that we compete for industrial business with coal and oil and gas, and the competition is very severe, and if we are operating under a certain power rate, which is subscribed to by the company after being suggested by the Commission on the temporary basis, and take an industry out there because we can give them their current at a cheaper rate than they can get it through some means of oil, coal or gas, and they take the load on, and then later on the price is "upped" because this temporary rate cut has only been a proportion of what really should have been done, we are in a very bad box. We are not met with the fact of raising that price for the industry. That industry goes off of our lines. We have invested capital to take it on, we have run a service there, we have what we call a connection charge and everything else in there, and maybe we begin, but I don't believe we would be allowed to operate and give that industry that [fol. 1405] low rate that we took them on at, because that would be in violation of the Commission rates and there would be discrimination, so, again, we have a tough problem there in order to keep that relation and keep that business in hand.

Now, all of these things, disgruntled customers, and lack of credit, make it that much more easy for any agency, whether it be state, municipal, or government, PWA, TVA, or rural electrification, to come in and compete with us, because they will find people disgruntled with our service, through no fault of ours, who will be very glad to take up their banner and carry on with it, and we cannot compete, of course, with that kind of subsidized competition and live.

Mr. Miles: All right, Mr. Miller, the witness is yours.

## Cross-examination.

By Mr. Miller:

Q. Mr. Knutson, do you know whether——

Judge Davis: Mr. Miller, could you push that down a little further and sit over here, so he can look at us and answer your questions, too?

By Mr. Miller:

Q. Mr. Knutson, does the Edison Light and Power Company——

[fol. 1406] Judge Davis: Just one minute, Mr. Miller.

Judge Buffington: Go ahead.

By Mr. Miller:

Q. Mr. Knutson, do you know of your own knowledge of any immediate need for capital that the Edison Light and Power Company has?

A. Yes, sir.

Q. What is that need?

A. Well, their construction budget requires about two hundred thousand dollars a year for new money, new capital, to take care of the construction that they think is necessary to give adequate and proper service to the consuming public.

Q. That amount, I assume, has been obtained over the past year or two years; you state that it is an ordinary requirement.

A. Well, I think it has this year. I don't know what it has been in the past. I think that is this year's budget.

Q. Do you know how the company proposes to take care of that requirement?

A. No, I don't.

Q. Would you think that it would be proper for them to issue securities to take care of two hundred thousand dollars? [fol. 1407]

A. No.

Q. Then their present need of capital could be taken care of without any financing?

A. Well, if they have credit so they can borrow the money, if that is their requirement, from some local source they

can handle it that way, or they could borrow it from friendly interests.

Q. Have you examined the testimony of the company's witnesses before the Commission as to rate of return?

A. No, sir. I have read the bill of complaint and the order, some of those things, but I haven't examined that book of testimony.

Q. Would you say there had been any change in the reasonable rate of return for the Edison Light and Power Company between, say, April or May of this year—of last year, 1937—and the present time?

A. Very definitely, yes.

Q. And in what amount?

A. Oh, the rate of return would have to be larger now than it was then in order to invest capital.

Q. How much larger?

A. Well, I couldn't say in dollars and cents, but—

Q. Well, you say it takes—

[fol. 1408] A. —I should say over a point, over a per cent—

Q. You mean one full per cent, in other words, seven per cent—

A. What is that?

Q. Eight per cent is what you think is required now—

A. Yes, a minimum of eight per cent.

Q. —under these conditions?

A. Yes, minimum of eight per cent.

Q. Then seven per cent would represent what you might think might have been required at that time?

A. Well, I couldn't say that, because I didn't make any analysis—

Q. Well, you stated the difference would be one per cent.

A. Oh, I said it might be that. I made no analysis of what it would be back in May or June in 1937, or 1936.

Q. Well, it might be more or might be less than one per cent, then?

A. No, it would certainly—oh, might be more or less?

Q. Yes.

A. Well, maybe.

Q. Now, has the government, either the State or the National Government subsidized any competition in the York area that you know of?

A. Not that I know of, no.



[fol. 1409] Q. Has there been any forty-five per cent contribution to competitive construction in the York area?

A. Not that I know of.

Q. Did you make any examination of the territory of the Edison Light and Power Company?

A. I did.

Q. What examination did you make?

A. Well, I went all over it, and offhand I would say that I think it is excellent territory, and I would call it a fairly concentrated property and a good one from the standpoint of operations.

Q. When did you make the examination?

A. I made it, finished it, yesterday.

Q. And how many days did you spend on it?

A. I was only there a day.

Q. You went around in an automobile, I suppose?

A. Yes, and walked around and inspected the plants and talked with the management and the operators, but I still think it is a well operated and a good territory.

Q. You would say that business was stable in that territory. Did you make any investigation of that?

A. Well, no, but I would say that it was a diversified territory of the kind that I would like to be in the electric business in.

[fol. 1410] Q. Did you make any investigation to determine whether there would be any change in the art? I believe you mentioned change in the art—

A. Yes.

Q. —as one thing affecting the rate of return.

A. Well, that is something we are always—

Judge Buffington: Just one minute; I didn't get that question. Read that.

(The question was repeated by the Reporter, as follows:

“Q. Did you make any investigation to determine whether there would be any change in the art? I believe you mentioned change in the art as one thing affecting the rate of return.”)

A. We always have a change in the art, because the progress of the electric industry has been very rapid, and we have seen some very phenomenal changes in the way we have done construction. For instance, we might,—we don't



know, but it might be quite possible—we might find an entirely different voltage, more economical and more perfectly fitted to the demands of our consumer in the future. That might come within three or four years.

In this particular situation maybe it might devolve upon [fol. 1411] some people to insist that we go underground in part or all of our electric overhead distribution system, which would cost several millions of dollars. That, you might say, would be a change in the art, or a question of modernity, which sometimes happens.

There are a great many things that we cannot encompass today which might be in effect two years from now and were not in effect in the past. That is our experience in the public utility business over the last twenty-five years.

By Mr. Miller:

Q. But your investigation disclosed——

By Judge Buffington:

Q. Was that made junk?

A. What is that?

Q. Was that made junk?

A. Yes, sir.

By Mr. Miller:

Q. Your investigation disclosed no imminent requirement that the lines be put underground in the York area, did it?

A. No, sir, I think they have done some of that there, but I know of no particular thing; but that is in the offing, and if I were investing capital in a public utility I would think [fol. 1412] about that situation as applying particularly to York.

Q. Usually the changes in the art result in reduction of construction costs, don't they, and improvement in construction?

A. Yes, sir.

Q. Can you give me any specific instance in which any of the quotations which you read to the Court have adversely affected any public utility financing in Pennsylvania?

A. No, sir, I cannot.

Q. You have a similar statute in New York——

A. New York State.

Q. —State, do you not?

A. Yes, sir.

Q. Has that statute adversely affected—

A. Yes, sir.

Q. —utility financing?

A. It has, in New York State.

Q. Well, now, didn't the Niagara Hudson Company float a thirty million dollar bond issue just recently?

A. Well, I don't—I don't know whether they did or whether they started to, I don't recall.

Q. Well, that would be a pretty good sized security issue to float?

[fol. 1413] A. Yes, it would, but that wouldn't mean that they didn't pay more for floating that under the existing law than they would have had that law in New York State not been in effect.

Q. Well, what has been the experience under the New York law? Has the Commission cut the utilities down to five per cent on—

A. I don't know.

Q. —Original cost depreciated?

A. I don't know that.

Q. That has not been made the subject of comment in your trade papers?

A. It may have, yes, but—

Q. But you didn't find that?

A. No, I didn't.

Q. Does the Edison Light and Power Company of York to your knowledge have to compete with coal, oil or gas establishments?

A. Oh, in all industrial business that they take they have to, yes, sir.

Q. Well, your investigation disclosed no specific instance of such competition?

A. No, sir, but that would be general public utility practice everywhere. We do it always.

Q. Do you know what percentage of the Edison Light and Power Company business represents industrial business?

A. Well, I—I can't recall it; no. I have looked into that and did know, and as I remember it, of new business less than a hundred horse power is taken on by the Edison, and they retained all the business they had prior to that composition agreement, so that probably there is a great lot of

the industrial business around there which is not run by the Edison Company.

Q. When you say "Edison Company" which Edison Company do you mean?

A. Edison Light and Power.

Q. You don't mean Metropolitan Edison?

A. No, sir, I don't know that.

Q. Where did you get the earnings figures?

A. I got all of my earnings and financial showings from data furnished me by executives of the company or out of the order of the Commission and the bills of complaint and so on, which I read. I have made no audit, independent audit or accounting of any of the figures.

Q. Do you know how many consumers to the square mile the Edison Light and Power Company territory comprises? [fol. 1415] A. Well, I know they have twenty-nine thousand some hundred electric consumers, and they operate in the City of York and environs. I don't think that the square—that the customers per square mile would be any indication of any particular thing about that. I still say I think it is what I call a concentrated electric utility operation, and I would be willing to admit that, if that is what you are driving at.

Q. Well, then, that is the basis of your——

A. Yes, sir.

Q. —judgment——

A. Yes, sir.

Q. —in that respect?

A. That is correct.

Q. Do you think the actual effect of the Commission order in this case will be to prevent the company from obtaining its ordinary capital requirements?

A. As cheaply as it would otherwise, yes, sir.

Q. No, I didn't say that.

A. Well, all right, I am sorry.

Mr. Miller: Will you read the question, please?

(The question was repeated by the Reporter, as follows:

[fol. 1416] "Q. Do you think the actual effect of the Commission order in this case will be to prevent the company from obtaining its ordinary capital requirements?")

A. I should say the company would probably be able to—even with this order in effect—to obtain their capital re-

quirements that they need for the next year, keeping in mind, of course, that there are friendly interests who have much money invested in the thing, and they probably wouldn't want to shut off that now and jeopardize their investment, and would go along, I mean, for some time to come.

By Mr. Miller:

Q. What in your opinion is a reasonable capitalization division as between bonds, preferred stock, and common stock?

A. Well, that depends upon particular characteristics of the physical property, the fair value, the market, and the market as respecting its absorption of bonds or stock, and the size of the issue. Ordinarily we say fifty to sixty per cent for bonds and the balance divided into preferred stocks or some other classification, and common stock, and that split, I mean, might be fifty-fifty—each particular situation [fol. 1417] has to be figured by itself as respecting that, in connection with the absorption powers of the market at that time.

Q. Well, would you say that fifty per cent bonds would be a reasonable capitalization—

A. Well, I would like to have—

Q. —in connection with this company?

A. I would like to have a fifty per cent bond on it if I were investing in the bonds of the company.

Mr. Miller: That is all I have.

By Mr. Cohen

Q. Mr. Knutson, just one question, do you know of any recent borrowings by the York Edison?

A. I don't understand what you mean.

Q. In your investigation on Sunday—was that just yesterday that you made this investigation—

A. No.

Q. —of the Edison property?

A. What investigation are you talking about?

Q. The same one that you are talking about.

A. Well, I have been in this for a month.

Q. I understood you to testify to Mr. Miller in response to a question submitted by Mr. Miller that you were there yesterday.

A. That was a physical inspection.

[fol. 1418] Q. Physical?

A. Of a physical property.

Q. I see.

A. Not an investigation of this situation.

Q. And that physical inspection lasted one day; is that correct?

A. Yes, sir.

Q. That is, yesterday. Now, during your contact with the York Edison did the management disclose to you any recent borrowings by the York Edison?

A. The New York Edison? I don't understand what you are talking about.

Mr. Miles: He is referring to Edison Light and Power as York Edison, for some reason.

Mr. Cohen: York Edison Company, as Edison Light and Power.

The Witness: Oh, I didn't understand that, yes.

By Mr. Cohen:.

Q. Did the management disclose to you any recent borrowings by the Edison Light and Power, of York?

A. No, sir.

Q. Do you know of any borrowings recently that were consummated in the City of York by any other public [fol. 1419] utility?

A. No, sir.

Q. Did the management disclose to you borrowings that were consummated by the Glenrock Power and Light Company—

A. No, sir.

Q. —also operating in York County?

A. No, sir.

Q. Then you wouldn't know what rate of interest or return was paid on those borrowings?

A. Certainly not.

Q. That is right.

Mr. Cohen: That is all.

Mr. Miles: That is all.

Judge Davis: That is all; next witness.



DR. FRANK PARKER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Miles:

Q. Doctor, will you please state your name and address?

A. Dr. Frank Parker, and my residence is 400 South Forty-fifth Street, Philadelphia, Pennsylvania.

Q. What is your occupation or profession?

[fol. 1420] A. Professor of Finance, Wharton School of Finance and Commerce, University of Pennsylvania. For twenty-seven years I have been on the faculty and teaching staff of the Finance Department of the Wharton School of Finance and Commerce, having been of professorial rank since 1920. During this period I have been actively engaged in teaching the subjects of Money and Credit, Banking, Commercial Credit, Business Cycles, and Public Utilities, and at the same time have devoted considerable time to making research investigations in the aforementioned fields.

Q. Now, what has been your experience, if any, in connection with the studies of economic problems relating to public utilities?

A. In 1916 I began to be active in financial consulting work with public utility and railroad companies.

From 1920 to 1926 I was employed at various times to make studies of the cost of obtaining money and certain of the non-physical elements of value of the Idaho Power Company, an electric light and power company with extensive properties in Utah, Idaho and Oregon, the Utah Power and Light Company which owns and operates electric light, power and street railway properties in Utah, Idaho and [fol. 1421] Wyoming, the Pennsylvania Power and Light Company in Pennsylvania, and the Peoples Natural Gas Company of Pittsburgh, Pennsylvania.

From 1926 to 1932 I made investigations into the financial affairs of the St. Louis Southwestern Railway Company, Missouri Pacific Railroad System, Pere Marquette Railway Company, The Virginian Railway Company, The International Railway Company of Buffalo, New York, the Dayton Power and Light Company of Ohio, and the Natural Gas Company of West Virginia, for the purpose of ascertaining the intangible elements of value of these utilities.



In all the foregoing cases the results of my investigations were presented to the courts or public utility commissions before which the rate or valuation proceeding took place.

Q. Now, Doctor, are you the author of any treatises or books dealing with economic questions?

A. Yes, I am the author of a textbook on Commercial Banking published by the International Textbook Company, of the Banking Section of the Cumulative Loose-Leaf Business Encyclopedia, published by the John C. Winston Company, of the Money and Banking Section of the Executives' Desk Book published by the same company, and I am [fol. 1422] now engaged in the preparation of numerous articles in the fields of Money, Credit, Banking, and Investments for the Dictionary of American History. In addition, I have published numerous articles in the field of finance in various newspapers, financial journals and periodicals, of which the following are typical:

Development of Business Forecasting, published in Administration, September, 1922.

Cost of Money to Public Utilities 1914-22, published in the Journal of Land and Public Utility Economics, in January, 1926.

Cost of Money as an Element in the Valuation of Public Utilities, published in the University of Pennsylvania Law Review, March, 1926.

Practical Limitations of Business Barometers and Forecasts, published in Commerce and Finance, 1926.

A series of fifty-two financial articles, fifteen hundred words each, written for the Philadelphia Inquirer, December, 1929 to June, 1930.

Federated Banking—A Way Out for the Small Bank, published in Forbes Magazine, March, 1931.

Q. I think that is enough of those, Doctor. Now, Doctor, will you please tell us whether the purchasing power of [fol. 1423] money is a constant or a variable thing.

A. The purchasing power or the value of the dollar signifies the ability of its possessor to command therewith a certain amount of goods or services at any moment of time. Of course, this is simply another way of saying that the price of the commodities so bought is changing. The purchasing power of the dollar is the inverse of the general price level. If the purchasing power of the dollar is high, it means that a dollar will buy let us say ten units of goods which is only another way of saying that prices are low. But

if at a subsequent time the purchasing power of the dollar is low, it means that a dollar will buy only one unit of the same goods, which is another way of saying that prices are high.

Now everyone recognizes that the prices of goods individually and collectively change over a period of time, that is to say that the purchasing power of the dollar changes so that if prices are rising it will buy less goods in the future than it will buy now.

To show the changing purchasing power of the dollar, that is changes in the general price level, index number of prices are commonly used. Probably the most frequently used [fol. 1424] index of prices is the one prepared and published by the United States Bureau of Labor Statistics, and for the purpose of making a trifle clearer the nature of the changes in the purchasing power of the dollar or the general price level, and the reasons which underly such changes, I have had prepared several charts and tables.

Q. Now, these are the charts, Doctor, to which you have just referred?

(Charts were shown to the witness.)

A. Yes, they are.

Mr. Miles: Your Honors, we would like to offer in evidence—

Judge Davis: All right.

Mr. Miles:—these charts dealing with the trend of money.

(Seven charts entitled “Index of Wholesale Commodity Prices”, “Money in Circulation Outside Treasury and Federal Reserve Banks”, “Excess Reserves of Member Banks”, “Member Bank Reserves and Related Items”, “World Gold Production”, “World Gold Reserves” and “Gold Production, Values, and Gold Reserves” were marked Complainant’s Exhibit B.)

Judge Buffington: Well, these general principles on the [fol. 1425] value of the dollar under different circumstances and in relation to different things, I think we are all familiar with that. What, specifically, do you want to bring out from this witness?

Mr. Miles: Your Honor, I rather expected Your Honors to take that viewpoint of this case. It happens that we are

conscious of the possibilities that these proceedings may be reviewed in some other tribunal.

Judge Buffington: Well, that is all right, then.

Mr. Miles: Now, this is the first time that the Supreme Court has ever passed or will have passed if then on the recoupment question.

Judge Buffington: Go ahead, we will accept on both sides the testimony.

By Mr. Miles:

Q. Now, Doctor, will you be good enough to refer to and explain as briefly as you can by reference to the chart captioned "Index of Wholesale Commodity Prices" the various kinds of price movements or changes in the purchasing power of money?

A. By reference to a chart captioned "Index of Wholesale Commodity Prices" it will be seen that there are two [fol. 1426] distinct types of movements in the general price level, or phrased otherwise, in the purchasing power of the dollar. There is a long-term movement commonly called the secular trend which generally runs over a period of twenty or thirty years and second, there is another entirely distinct movement, called the cyclical movement, of much shorter duration, running on the average approximately two to three years.

The secular trend of prices is shown on the foregoing chart by a long downward movement from 1865 to 1896, a long upward movement from 1896 to 1920, a long downward movement from 1920 to 1933, and clear-cut evidence of the beginning of an upward movement since 1933.

In contrast with the secular movement, the cyclical movement or short-term movement of prices is typically illustrated on the foregoing chart by the upward movement from 1878 to 1883 followed by the downward movement from 1883 to 1886, and by the upward movement from 1915 to 1920, followed by the downward movement from 1920 to 1923, and unmistakable evidence of a rising cyclical movement since 1933.

While there is a discernible difference between the duration [fol. 1427] of these movements of prices accounting for changes in the purchasing power of the dollar, they are alike in one significant particular, namely that they are inherent or innate in our business structure, and have been manifest throughout the entire business history of the United States,

so that for a century or more for which we have accurate business annals, the changes in the purchasing power of the dollar have invariably reflected both secular movements and cyclical movements. From our present knowledge there is every reason to believe that future changes in the purchasing power of the dollar similarly will show both secular movements and cyclical movements.

Q. Now, Doctor, will you tell us what your studies and investigations in the fields of money and credit and prices lead you to believe will be the course of prices in the United States in the immediate future?

A. According to the available evidence in my judgment the course of prices in the United States in the immediate future will be upward. By way of preface to that judgment, it might be said that the changes in the general level of prices, that is in the purchasing power of the dollar, are related to or connected with the actual and potential volume [fol. 1428] of money available for the settlement of business transactions. So it may be said generally that when a larger quantity of money is available for the settlement of business transactions, prices rise effecting a commensurate decline in the purchasing power of the dollar.

Looking specifically now at conditions in the United States, let me direct your attention to the second chart captioned "Money in Circulation". The long heavy solid black line on this chart represents the money in actual circulation in United States, that is in the pockets of the people or in the tills and vaults of business enterprises and the commercial banks, and consequently represents the amount of currency, exclusive of bank deposit currency, that is used daily in the settlement of business transactions. It will be noted that the money in circulation has increased from five billion three hundred million dollars in January 1934 to six billion five hundred and sixty-one million dollars in November 1937, or an increase of twenty-four per cent. During this same period the price level as shown by the index of wholesale prices of the United States Bureau of Labor Statistics rose approximately eighteen per cent.

[fol. 1429] Now, while the actual money in circulation in the United States has a direct bearing upon the problem, accurately to gauge the immediate future of prices in United States requires that attention be given to the large sums of money that may be added to the existing supply by the simple device of an executive order or an administrative rul-

ing of Federal Government officers. An examination of our existing legislation shows that there are approximately 7½ billion additional dollars that may be injected into the money in circulation in United States. Approximately 4¼ billion dollars may be added to our money supply by the first two that I am about to mention, and by the last two measures an additional three billion dollars might be added with no more of a change in our existing laws than to permit gold to circulate again in the form of gold certificates.

Mr. Miller: Well, now, if the Court please, I don't want to interrupt the Doctor, I think he is an expert, but I do feel that his testimony, in relation, I suppose, to Section 310 (e) is not exactly relevant, since I see nothing in 310 (e) which would prevent giving consideration to all of the [fol. 1430] factors he mentions, if they should be found to be relevant.

Mr. Miles: Of course, if Your Honors are prepared to agree with that construction of 310 (e) without any argument on it that would be one thing, but we do not so understand the section. On the contrary, we contend that the definition of "operating income" prevents any consideration of these factors to which Dr. Parker is testifying.

By Judge Davis:

Q. Doctor, are you pretty nearly through with that phase?

A. It won't take me very long to finish the whole testimony.

Judge Davis: All right, proceed.

A. (Continued:) The first measure to which I have referred gives to the President of the United States in certain circumstances the right by an Executive Order to direct the Secretary of the Treasury to issue United States notes or greenbacks up to three billion dollars.

The second measure is the Silver Purchase Act of 1934, which declared it to be the policy of the United States that the proportion of silver to gold in the nation's monetary stocks should be increased with the ultimate objective of [fol. 1431] having and maintaining 25% of the monetary value of such stocks in silver, and toward this end it directed the Secretary of the Treasury to purchase silver at home or abroad to establish such proportional holdings. Against such purchases of silver, the Act specifically stip-



ulates that there shall be issued and put into circulation silver certificates. Apart from the fact that the Federal Government has already added through this channel eight hundred million dollars to the money in circulation in United States, as of the beginning of 1938 there still remains to be purchased approximately one billion five hundred million dollars of silver in order to bring the monetary stock of silver up to an amount where it is 25% of our total monetary stocks.

The third of the measures to which I previously referred is that the President of the United States, whose decision shall be final and not subject to review by any other officer of the United States, has the exclusive control of the sum of one billion eight hundred million dollars which was created as a "stabilization fund" by the Gold Reserve Act of 1934, so that at any time presumably the President of the United States can inject this vast sum of money into the monetary [fol. 1432] circulation of the United States.

The fourth measure to which I previously referred stipulates that the Secretary of the Treasury may set up a so-called inactive fund for the purpose of neutralizing the effect on member bank reserves of future gold acquisitions. This fund was inaugurated in December, 1936, and its modus operandi was to offset such acquisitions, either from imports or from new production, through sales to the public of an equivalent amount of United States government obligations and then setting aside the purchased gold in an inactive account in the Treasury. In this way it was hoped to keep the gold out of the country's credit base, but as foreshadowed by the action of the Treasury Department in September 1937, this so-called gold sterilization policy is more likely to be observed in its breach than in its observance, for in that month the treasury released three hundred million dollars in gold from the inactive account, depositing it in the Federal Reserve Banks, and then immediately used it to meet a like amount of maturing United States Government obligations. In effect this transaction transferred three hundred million dollars in gold from the Treasury's [fol. 1433] inactive fund to member bank reserves, and thus added this money to that already in circulation. With this precedent established, it is not unreasonable to conclude that if at any future time it suits the convenience of the Treasury Department, as a matter of fiscal policy or other-



wise, the entire one billion, two hundred million dollars in gold now in the inactive fund may be added to the money in circulation in the United States.

Now, if we combine these four items it will be seen that today the money in circulation in United States actually can be increased by the administrative acts of the President and the Secretary of the Treasury to the extent of  $7\frac{1}{2}$  billion dollars. Some semblance of the effect of this stupendous addition to our money in circulation on the general level of prices can be gathered by further reference to the chart headed "Money in Circulation". Referring to this chart, it will be observed that the money in circulation increased from five billion two hundred eighty-nine million dollars in January 1934 to six billion five hundred sixty-one million dollars in November 1937, or 24%, whereas during the same period the United States Bureau of Labor Statistics index of wholesale prices rose from seventy-two to [fol. 1434] eighty-three or approximately 15%. Assuming that the same ratio of increase would be maintained, then if, as the dashed line designated Authorized but Unissued at the top of the year 1937 indicates, the total money circulation were increased by the potential  $7\frac{1}{2}$  billion dollars or 115%, this would increase prices approximately 72%.

By Mr. Miles:

Q. Now, Doctor, does that appraisal give any consideration to the expansion of bank deposit currency likely to ensue if our money supply is increased in the manner you have indicated?

A. No, sir, it does not. There is much more, really, to this vista if account is taken of the tremendous potential increase that can be effected in our bank deposit currency. Assuming that the foregoing  $7\frac{1}{2}$  billion dollars were added to our money supply, it is likely indeed that 95% or more of it would find its way into our bank reserves. Since today, as distinguished from August 1936 and prior thereto, five dollars of bank deposit currency can be created against one dollar of bank reserves, this would mean that we would have an increase in the bank deposit currency of United States approximating forty-three and one-half billion dollars [fol. 1435] lars, thus practically doubling our existing bank deposit currency. The relation between these different kinds of moneys is indicated by the column at the right of the general chart captioned "Money in Circulation."

Shown in that perpendicular column at the right, the small block at the bottom is actual money in circulation in November, 1937. The stippled block above it, raising the total money in circulation to fourteen billion dollars, represents the addition of seven and one-half billion dollars authorized but unissued, as I have described. And the blank space above that, raising the total quantity of money, including bank deposit currency that might be in circulation, represents the addition of those forty-three and one-half billion dollars of bank deposit currency which would be predicated upon the addition of seven and one-half billion dollars to our actual money in circulation.

Q. Now, in addition to these factors are there any other potentialities that in your judgment might affect the trend of prices or the cost of money in the United States?

A. Very definitely, for the preceding discussion dealt primarily with immediate actualities. Turning to the realm of potentialities that augur for a rising price level in United [fol. 1436] States there are the following factors:

(1) The excess reserves prevailing in our commercial banking system which are the reserves over and above those required by law.

(2) The threat of inflationary movements of prices, and

(3) The eventual effects of the devaluation of the dollar that began with the Presidential Proclamation on January 31, 1934, by which the gold content of the dollar was reduced forty-one per cent.

Q. Now, will you explain briefly each of those factors, Doctor, that you just mentioned?

A. The excess reserves of the member banks in the Federal Reserve system of United States have constituted a real problem ever since 1934 as is graphically shown on the chart captioned "Excess Reserves of Member Banks." This problem grew increasingly acute until the middle of 1936 when a fifty per cent increase in the reserve requirements was ordered by the Federal Reserve Board in order to contract the base upon which bank deposit currency might be created. Just prior to this administrative order, the excess reserves amounted to three billion two hundred sixty million dollars against which ostensibly thirty-two billion [fol. 1437] dollars of bank deposit currency could be issued. With this action of the Federal Reserve Board reducing the

excess reserves approximately to one billion, eight hundred million dollars the problem was temporarily solved, although the reserves again began to increase, and in the early part of 1937 they had reached the total of two billion, one hundred million dollars. To check this tendency and in its own language "in order to prevent an injurious credit expansion" the Federal Reserve Board in February 1937 again ordered a fifty per cent increase in the member bank reserve requirements, twenty-five per cent of which became effective March 1, 1937 while the remaining twenty-five per cent became effective on May 1, 1937. Even after the May 1st increase in reserve requirements, the excess reserves of the member banks amounted to nine hundred million dollars, and since that time as the chart clearly shows, they have grown until today they amount to one billion, two hundred million dollars, as is shown on the lower half of the chart captioned "Member Bank Reserves and Related Items", which is the next chart.

Summarily, therefore, the situation with reference to excess reserves today is this: the Federal Reserve Board had increased the legal reserve requirements of the member banks to the minimum provided by existing law. In a word, it has doubled the legal reserve requirements as they stood on August 14, 1936. Yet despite this action—

Q. You say they have increased those legal reserve requirements to the minimum, or the maximum, Doctor?

A. They have increased them to the maximum provided by existing law.

Q. You inadvertently said "minimum".

A. I am sorry. Yet despite this action the excess reserves of the member banks alone has declined since that time only two billion dollars. With the excess member bank reserves now standing at one billion, two hundred million dollars and showing a definite tendency again to expand and with the Federal Reserve Board having reached the limit of its powers to check this expansion, there is in my judgment here a very real portent of further expansion of bank deposit currency to the extent of at least six billion dollars. I say at least six billion dollars, because the foregoing evaluation of the excess reserve condition does not take into [fol. 1439] account the excess reserves that are now being carried by non-member banks not in the Federal Reserve System. There are approximately eighty-five hundred such banks, excluding mutual savings banks, and on the assump-

tion that the ratio of their deposits to the total deposits of member banks is a fair index of the ratio of their excess reserves to the excess reserves of member banks, it may well be that there are four hundred to five hundred million dollars of excess reserves in the non-member banks. With this as a credit base, the non-member banks might well expand their bank deposit currency another two billion dollars.

Proceeding now to the threat of inflationary movements of prices, this may be brought about by the continued deficit financing of our Federal Government, or by war. While all of us earnestly wish to avoid the destruction and despoliation of war—

Judge Buffington: Counsel, what is it you want to get through my head with all these statistics and things?

Mr. Miles: We want to show Your Honors that throughout the economic history of this country, first, that this dollar is not a constant thing but a variable thing—

[fol. 1440] Judge Buffington: Well, now—

Mr. Miles: —and, secondly, and under the Bluefield case, which I think is authority for it, we want to show to Your Honors that all of the economic forces operating today indicate a rise in the purchasing price of the dollar, and that, therefore, under this so-called recoupment section—

Judge Buffington: A rise in the purchasing price?

Mr. Miles: Yes, sir—I mean a fall, a fall in the purchasing price.

Judge Buffington: A fall.

Mr. Miles: That is right—that goods will become more costly—

Judge Buffington: Yes.

Mr. Miles: —that labor will go up—

Judge Buffington: Yes.

Mr. Miles: —and that, therefore, the money which may be confiscated from us by this temporary order will not be returned to us—

Judge Buffington: Well, now, can't you—

Mr. Miles: —under 310 (e).

[fol. 1441] Judge Buffington: Can't you embody that in a leading question to this gentleman?

Judge Davis: State it in about one or two sentences.

Judge Buffington: It seems to me I could.

Mr. Miles: All right, sir, I will attempt to do that. I didn't like to lead the witness.

By Mr. Miles:

Q. Doctor, based on your study of past trends, your knowledge of the various factors to which you have referred in your testimony up to this time, and having in mind particularly the gold reserve and the inflationary measures pending in Congress to which you have referred, will you please state whether in your opinion during the next six to twelve months prices of commodities and rates paid to labor are likely to go up or down?

A. Taking into consideration all of the actual and potential factors which I have detailed, it is my considered judgment that the immediate future of prices in the United States will be definitely upward, and, moreover, taking those same factors that I have detailed into consideration, it is likewise my considered judgment that the long-time or secular trend of prices in the United States will be immediately upward.

Therefore, answering more specifically your question, it is my judgment that the prices of labor and of materials in the next six to twelve months, as well as in the years following, will be definitely upward.

Q. Now, I ask you whether that would mean—

By Judge Buffington:

Q. And the value of the dollar correspondingly downward.

A. The purchasing power of the dollar, therefore, would be correspondingly down.

Judge Buffington: Yes. Well, now, go ahead.

By Mr. Miles:

Q. Does that mean in your opinion that a sum of money due and owing today, but which could not be actually paid or collected until some future time, would give the recipient when finally it was placed in his hands less in goods and service of all kinds than he could obtain for that money today?

A. That is undoubtedly what a rising price level means.

Mr. Miles: That is all.



[fol. 1443] Cross-examination.

By Mr. Miller:

Q. Dr. Parker, that would be equally true whether the dollar represented a returned dollar or a reparation dollar, would it not?

A. I don't understand the question.

Q. Supposing a consumer wishes to claim reparation by virtue of the collection of rates that were too high. His claim for reparation could not reasonably be measured in specific dollars except in reference to the changing purchasing power of the dollar, is that true?

A. Well, that, of course, is predicated upon an assumption that you have a rise in the purchasing power of the dollar, or a decline of prices, which is distinctly contrary to all the evidence now available, upon which my judgment is based.

Q. Now, if the——

A. And, secondly, if I may make further answer, if an irreparable damage is done with a rising price level or a declining purchasing power of the dollar to this utility, then any subsequent reparation that might be made at some distant time to a rate payer would not extricate the utility from the difficulties which this Section 310 (e) would at this time impose upon it.

[fol. 1444] Q. Well, now, you say if the utility collects a dollar too little from me at this time and gets a dollar back by virtue of 310 (e) that does not fully recompense them, does it?

A. That is correct.

Q. All right. Now, then, if the utility collects a dollar too much from me and I get a dollar back, that won't fully recompense me, either, on the same basis, will it?

A. But that is making an assumption which is contrary again, I say, to all the evidence in the very picture.

Q. It is making exactly the same assumption that you made in the case of the utility.

A. I have made no assumption in the utility, I have pointed to the rising price tendency, predicated upon the facts.

By Judge Davis:

Q. But, Doctor, just assuming that what he says is true, then the conclusion follows, doesn't it?



A. The conclusion of the counsel?

Q. Yes.

By Mr. Miller:

Q. Yes, if the prices are rising the purchasing power of the dollar is falling for me as well as for the utility, isn't it?

[fol. 1445] A. That is true, in that sense, and only in that sense.

By Judge Davis:

Q. Well, that is your answer?

A. Yes.

By Mr. Miller:

Q. Now, will you point out to me any words in Section 310 (e) which would prevent the utility from securing reimbursement of an amount more than an arithmetical sum in dollars representing the arithmetical difference between rates, revenue under the temporary rates, and revenue under the permanent rates?

Mr. Miles: Now, Your Honors, I object to that question because that is asking Dr. Parker to put a legal interpretation upon Section 310 (e).

Judge Davis: Well, he may answer if he can.

(A copy of the Public Utility Law was shown to the witness.)

The Witness: Will you read the question, please?

(The question was repeated by the Reporter, as follows:

"Q. Now, will you point out to me any words in Section [fol. 1446] 310 (e) which would prevent the utility from securing reimbursement of an amount more than an arithmetical sum in dollars representing the arithmetical difference between rates, revenue under the temporary rates, and revenue under the permanent rates?")

A. As I read Section 310 (e), this particular clause of it, "then such public utility shall be permitted to amortize and

recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect." can mean only one thing: a numerical sum expressed in dollars, because to me it is clear that if the intent of the Legislature were to make it more inclusive than that it would have had to change the language so that it would have read, perhaps, something like this, "such sum as may be represented by the difference between the gross income", et cetera.

Mr. Miller: That is all.

By Mr. Cohen:

[fol. 1447] Q. Doctor, you are acquainted with the University of Pennsylvania Law Review, are you not?

A. Yes, sir.

Q. I think you indicated that you contributed to that publication?

A. That is correct.

Q. Your response to Section 310 (e) is directly in opposite to a recent case published in the University of Pennsylvania Law Review, which comments on the Edison Light and Power Company versus Driscoll, the case reported in 5 U. S. L. Week 160, being the case in which His Honor, Judge Davis, Judge Watson and Judge Johnson had occasion to render an opinion. Do you agree with this contention, which says: "Inasmuch as the statute provides that the utility may recover in the future the difference between the gross income received under the temporary order and that which would have been obtained had the final rate been in effect, it seems fair to say that this future payment, in order to equal the past loss, must include interest."?

A. I wouldn't agree with that, because it presumes an interpretation which in my judgment runs distinctly counter to the terms of the act, and that is what you asked me for, is it not, Mr. Counsel, my judgment?

[fol. 1448] Mr. Miller: I asked your interpretation.

By Mr. Cohen:

Q. So you do not agree with that case in the University of Pennsylvania Law Review?

A. I do not, sir.

Q. Now, you have spoken here about the variable change in the dollar, and you have admitted in response to a question submitted by Mr. Miller, and which His Honor Judge Davis asked you to answer, that this variable dollar would affect the utility as well as the consumers, is that not correct?

A. Not in the same way nor to the same degree, no, sir.

Q. I see.

A. My answer did not encompass that point.

Q. But to some extent the variation in the dollar received changes with the consumer the same as it does with the utility?

A. Mr. Cohen, I think I can enlighten you on my answer to Mr. Miller. My answer to Mr. Miller's question was distinctly an answer to a hypothetical question.

Q. I see, that is right.

A. And the conclusions which I made concerning the price trends were as I view existing facts and actualities today.

[fol. 1449] Q. Do you know of any transaction which requires monetary reparation that is not affected by the change in the purchasing value of the dollar?

A. I know of none.

Q. They all are, is that not correct?

A. Subject to the changing in the purchasing power of the dollar, that is right.

Q. So this particular reparation is not any different than an action on a contract today, for breach of a contract four years ago, and the Court will authorize the payment in dollars, is that not correct?

A. But that is not what this reparation or recompment clause 310 (e) provides, as I interpret it. It is specific, it gives back not any equivalent purchasing power, but it gives back the sum in dollars, and then it is a matter of legal interpretation whether that sum in dollars shall be expanded or contracted to give back an equivalent purchasing power.

Q. Do you know of any damages that are given back in purchasing power rather than in dollars?

A. It is my understanding that in almost every judgment of a court of law or equity consideration is given not only

to the dollars but to the damage done through a deprivation of those dollars pending the action.

[fol. 1450] Q. I see. Do you know of any contractual relationship where harm is done to one or the other for the breach of the contract where the damage decided on by the jury and the court is in purchasing value rather than in dollars?

A. I know of no specific case.

Q. No, and I don't think anybody else does.

Mr. Cohen: That is all.

Mr. Miles: That is all. Your Honors, we have one witness that will take about five minutes.

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EDWARD C. ISELE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Miles:

Q. Mr. Isele, what is your name, residence and occupation?

A. Edward C. Isele, 180 Wearimus Road, Ho-ho-kus, New Jersey.

By Judge Buffington:

Q. What is that?

A. 180 Wearimus Road, Ho-ho-kus, New Jersey.

Mr. Miles: That is in His Honor Judge Davis' jurisdiction [fol. 1451] tion, isn't it? Perhaps I should have asked your business address.

By Mr. Miles:

Q. Are you an officer of the Edison Light and Power Company, Mr. Isele?

A. Yes, I am vice-president.

Q. And have you general supervision of the accounting records of that company?

A. Yes, I do.

Q. Now, Mr. Isele, will you please state whether that company maintains continuing property records?

A. No, it does not.

Q. And what do you mean by the use of the phrase "continuing property records"?

A. Why, continuing property records are in effect a perpetual inventory of its physical property.

Q. Now, have you prepared or had prepared under your supervision income statements of the Edison Light and Power Company for the calendar years 1935 and 1936?

A. I have.

Q. And I hand you two statements, one of which is entitled "Statement of Income For the twelve months ended December 31, 1935", and the other "Statement of Income For the twelve months ended December 31, 1936" and ask [fol. 1452] whether they are the statements that you have just referred to.

A. They are.

Mr. Miles: We offer these in evidence and ask that they be marked.

(Statement entitled "Edison Light and Power Company, Statement of Income For the twelve months ended December 31, 1935" was marked Complainant's Exhibit C.

Statement entitled "Edison Light and Power Company, Statement of Income For the twelve months ended December 31, 1936" was marked Complainant's Exhibit D.)

Mr. Miller: I ask the purpose, if the Court please.

Mr. Miles: Complainant's Exhibits numbers C and D; the purpose of this is to show Your Honors what the operating income of the company for each of these years has been, and we shall argue when we are afforded an opportunity to argue the case that this is an instance where the Commission should have prescribed temporary rates, assuming they have the constitutional power to prescribe them, under Section 310 (b), and under that section we would be entitled to a return equal to our operating income [fol. 1453] for one or the other of these years. That is its sole purpose.

## COMPLAINANT'S EXHIBIT "C"

## "Edison Light and Power Company

Statement of Income for the Twelve Months Ended December 31, 1935

Operating revenues:		
Electric.....		\$1,901,951.22
Operating expenses and maintenance:		
Operating expenses.....	\$757,955.67	
Maintenance.....	69,927.56	
		<u>827,883.23</u>
Balances before taxes and provision for retirements.		\$1,074,067.99
Provision for taxes:		
Federal income taxes.....	\$97,636.84	
Other taxes.....	157,472.44	
		<u>255,109.28</u>
Balance before provision for retirements.....		818,958.71
Provision for retirements, renewals and replacements of fixed capital.....		<u>129,349.34</u>
Operating income.....		\$689,609.37
Other income.....		<u>2,115.48</u>
Gross income.....		\$691,724.85
Deductions from income:		
Interest on unfunded debt.....	\$78,297.72	
Miscellaneous deductions.....	824.93	
		<u>79,122.65</u>
Balance of income.....		\$612,602.20"

A copy of Complainant's Exhibit D follows:

[fol. 1454]

## COMPLAINANT'S EXHIBIT "D"

## "Edison Light and Power Company

Statement of Income for the Twelve Months Ended December 31, 1936

Operating revenues:		
Electric.....		\$2,018,719.96
Operating expenses and maintenance:		
Operating expenses.....	\$833,359.01	
Maintenance.....	85,840.19	
		<u>919,199.20</u>
Balance before taxes and provision for retirements.		\$1,099,520.76
Provision for taxes:		
Federal income taxes.....	\$116,425.34	
Other taxes.....	215,972.43	
		<u>332,397.77</u>
Balance before provision for retirements.....		\$767,122.99
Provision for retirements, renewals and replacements of fixed capital.....		<u>120,421.50</u>
Operating income.....		\$646,701.49
Other income.....		<u>488.66</u>
Gross income.....		\$647,190.15
Deductions from gross income:		



By Mr. Miles:

Q. Now, Mr. Isele, have you had prepared under your supervision a statement showing the consumers of the company that were connected for service during the calendar year 1937, and also showing the consumers whose service was disconnected during that same year?

[fol. 1455] A. I have.

Q. And is this a copy of the paper to which you have referred?

(The witness was shown a statement entitled "Edison Light and Power Company Consumers connected and disconnected during twelve months ended December 31, 1937".)

A. That is correct.

By Mr. Miles:

Q. Now, this statement shows, as I understand it, that during the calendar year 1937 5,671 consumers were connected for service?

A. Correct.

Q. And during that same year 4,704 consumers had their service disconnected?

A. That is correct.

Mr. Miles: We ask that that be offered in evidence.

Mr. Miller: We assume that that is offered to show the turnover in consumers, and we submit that it is not substantial evidence of a turnover in consumers since there is no indication of how many people moved from house to house and had their service disconnected at one house and [fol. 1456] reconnected at another, whereas the outgoing tenant at the second house had his service disconnected.

Judge Davis: Well, you may bring that out, if you can, Mr. Miller, in cross-examination.

Mr. Miller: Well, I don't think they know it.

Judge Davis: Well, you can find that out.

Mr. Miles: We ask that this be marked Complainant's Exhibit E.

Mr. Miller: Will you note an exception on that?

Judge Davis: Yes.

(Statement entitled "Edison Light and Power Company Consumers connected and disconnected during twelve months ended December 31, 1937" was marked Complainant's Exhibit E. A copy thereof follows:

[fol. 1457]

## COMPLAINANT'S EXHIBIT "E"

"Edison Light and Power Company"

Consumers connected and disconnected during twelve months ended December 31, 1937

Month of:	Connected					Disconnected					Total number of consumers	
	Residential	Commercial	Cooking	Power	Water Heating	Total	Residential	Commercial	Cooking	Power		Water Heating
December 31, 1936.												29,029
1937:												
January.....	248	40	2	5	3	298	236	54	4	6	1	301
February.....	291	57	4	2	0	354	209	35	2	3	0	249
March.....	426	63	1	10	2	502	411	54	1	7	0	473
April.....	518	58	4	16	7	603	396	49	4	10	0	459
May.....	395	57	5	9	13	479	281	44	5	5	1	336
June.....	385	53	5	3	11	457	317	46	3	3	1	370
July.....	423	61	5	10	4	503	309	63	2	6	0	380
August.....	404	48	4	6	1	463	337	47	2	8	1	395
September.....	493	53	3	9	3	561	390	50	1	11	5	457
October.....	455	59	2	9	1	526	405	48	2	9	3	467
November.....	448	55	3	10	0	516	380	58	1	13	8	460
December.....	358	38	4	9	0	409	290	52	3	10	2	357
Total.....	4,844	642	42	98	45	5,671	3,961	600	30	91	22	4,704

")

[fol. 1458] By Mr. Miles:

Q. Now, just one more question. Have you had prepared a statement showing the kilowatt hour output of energy for the Edison Light and Power Company for the months of October, November and December of 1937, with a comparison for the same months of the preceding year, and showing a similar comparison for the first thirteen days of January of 1937 and 1938?

A. I have.

Q. Is this the statement to which you have just referred?

(Statement entitled "Edison Light and Power Company K.W.H. Output For Months of October, November and December, 1936 and 1937 and period January 1st to January 13th inclusive for the years 1937 and 1938" was shown to the witness.)

A. It is.

By Mr. Miles:

Q. Referring to the statement which you have just identified, Mr. Isele, this shows that the kilowatt hour consumption of energy increased how much in October, 1937 over October, 1936?

A. 1.03 per cent.

Q. And during the month of November was there an increase or decrease in kilowatt hours of energy consumed?

A. There is a decrease of one per cent as compared to the previous November.

Q. And in December what was the result?

A. A decrease of 2.68 per cent as compared to the previous December.

Q. And for the first thirteen days of January, 1938, as compared with the same days for January, 1937 what was the result?

A. A decrease of 7.51 per cent.

Q. So that there has been a steady decrease in kilowatt hours of consumption since November 1st, 1937 up to January 13, 1938, is that correct?

A. A steady decrease beginning with the month of November, yes, sir.

Mr. Miles: We offer this in evidence as Complainant's Exhibit F.

Judge Davis: That is admitted.

(Statement entitled "Edison Light and Power Company K.W.H. Output For Months of October, November and December, 1936 and 1937 and period January 1st to January 13th inclusive for the years 1937 and 1938" was marked Complainant's Exhibit F. A copy thereof follows:

[fol. 1460]

COMPLAINANT'S EXHIBIT "F"

"Edison Light and Power Company

Kwh. Output for Months of October, November and December, 1936, and 1937 and Period January 1st to January 13th, Inclusive, for the Years 1937 and 1938-

	Kwh.		Kwh.		Percent	
	Previous Year	Current Year	Increase	Decrease	Increase	Decrease
October.....	7,005,800	7,078,000	72,200		1.03	....
November.....	6,722,200	6,654,900		67,300		1.00
December.....	7,253,700	7,059,000		194,700		2.68
January.....	2,994,600	2,769,700		224,900		7.51")

By Mr. Miller:

Q. Mr. Isele, when you say decrease, you mean decrease as against the figures for the previous year?

A. That is correct.

Mr. Miles: That is right, for the same month of the previous year. That is all, Mr. Isele.

Cross-examination.

By Mr. Miller:

Q. Mr. Isele, in your statement of income how much has been included in the operating expenses for rate case expenses?

A. Well, for the 1935 period there was no rate case expense included.

[fol. 1461] For the '36 period the figure was in the neighborhood of thirty some odd thousand dollars.

Q. Was it \$38,710, do you recall?

A. Substantially that, yes.

Q. Now, on what basis were the taxes computed, upon the actual revenues or upon some calculated allowable revenue or reasonable revenue?

A. They were calculated on the actual taxes in effect, based upon the income of the company for that period.

Q. Now, in this exhibit showing the consumers connected and disconnected, do you have any figures showing how many of those disconnections were by virtue of someone who was moving from one point to another in the territory?

A. No, I do not, Mr. Miller.

Q. Then you do not mean to imply in submitting this exhibit that the disconnected consumers were entirely lost to the company, do you?

A. No.

Mr. Miller: That is all.

By Mr. Cohen:

Q. Just a question, Mr. Isele, how long have you been vice-president of the Edison Power and Light Company—Light and Power?

A. I have been vice-president since early this year, al-[fol. 1462] though I have been connected with the company continuously since 1926.

Q. Now, you say that since November of 1937 there has been a decrease in the kilowatt consumption?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now, are you acquainted with the order of the holding company reducing the salaries and the personnel—rather, reducing the personnel of the Edison Light and Power Company ten per cent?

A. No, sir.

Q. You are not? How many employees of the Edison Light and Power Company were dismissed within the past two weeks?

A. I don't know.

Q. Were there any?

A. I don't know as to that at all. There may have been some, there may have been an increase. I don't know the facts of that.

Q. You don't know anything about that. Is there anybody here, that you know, that would be in a position to testify as to that decrease in operating expense?

A. No, I don't know for a fact that anybody here would [fol. 1463] have those records.

Q. Now, you say you were connected with the Edison Light and Power Company for some period of time, is that correct?

A. Yes.

Q. Do you know whether or not the Edison Light and Power Company in their corporate net income tax return have filed individual returns, or that the Edison Light and Power Company were allowed to file a consolidated return with the York Railways Company?

A. Well, up to the time that consolidations were permitted they filed consolidated returns, but in the last two or three years, when that particular law was eliminated from the statute books, they filed individual returns.

Q. They filed individual returns. Do you know whether or not the Supreme Court of the Commonwealth of Pennsylvania has changed the application of the filing of individual returns and has allowed the filing of consolidated returns?

Mr. Miles: Your Honors, I don't think this witness ought to be interrogated on—

Judge Davis: Well, he can answer if he knows.

Mr. Miles: Well, it is a purely legal question.

[fol. 1464] The Witness: What I was referring to is the Federal—

By Judge Davis:

Q. Well, just wait, do you know, or do you not know?

A. No, I don't know as to that.

By Mr. Cohen:

Q. Well, you say you were referring to the Federal Income Tax?

A. Yes.

Q. Now, I will ask you, do you know whether or not the Edison Light and Power Company, along with its sole owner, the York Railways Company, has filed for the State net income tax, corporate net income tax, an individual or a consolidated return?

A. No, I don't know the facts as to that.

Q. But you say you are the vice-president of the company?



A. Yes, sir.

Q. And what are your duties?

A. Well, my duties are particularly financial accounting.

Q. Do you file the tax returns?

A. No, I don't have anything to do with that.

Q. Know nothing about that. Do you know whether [fol. 1465] there is anybody here that would be in a position to advise the Court as to the method by which the York Railways and Edison have filed their State net corporate income tax returns?

A. No, sir.

Mr. Cohen: That is all.

Mr. Miles: That is all.

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Mr. Miles: Now, if Your Honors please, if we may have incorporated in the record—and I take it there is no objection from counsel for the Commission—a transcript of the testimony of the proceedings before the Pennsylvania Public Utility Commission, including all exhibits that were offered by either the company or the Commission, with that incorporation into the record the company is ready to rest its case.

Mr. Miller: I assume that includes the matter put in by stipulation—

Mr. Miles: All of them.

Mr. Miller: —November 15, 1938.

Mr. Miles: That is correct.

Mr. Miller: 1937.

Mr. Miles: All of them, every exhibit that has ever been [fol. 1466] filed with the Commission since the inception of the proceedings, and all testimony that was taken before the Commission.

Mr. Miller: We have no objection to that offer.

Judge Davis: All right, admitted.

Mr. Miller: I believe the annual reports were offered in evidence. The annual reports filed by the Edison Light and Power Company with the Commission were incorporated in the record by reference, but were not physically offered. I make that statement so that the Court may not feel that when the Commission bases an argument or a conclusion

upon matters in the annual reports and the Court does not find those annual reports physically in the record, that does not mean that they were not before the Commission and properly a part of the record.

Mr. Miles: That is true. Would Your Honors like us to hand you these at this time?

Judge Davis: Not at this time.

Mr. Miles: That is what I supposed, sir.

Complainant rests.

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[fol. 1467]      Respondents' Evidence

Mr. Miller: We desire to offer only one item of evidence, Your Honors, being a page 177 of the January 8th, 1938 issue of the Commercial and Financial Chronicle, in New York, for the purpose of showing the comments on that page as to the course of the bond market, and to bring Exhibit 32, sheet 3, submitted at page 1044 of the record, up to date. That covers general bond yields.

Mr. Miles: Your Honors, for the purposes of the record we object for the same reason we objected to the exhibit when it was presented before the Commission, as relating not specifically to public utilities, but as including Government bonds and various characters of industry; and for the further reason it reflects only bond prices, with no regard to stocks.

Judge Davis: Admitted, and we grant an exception. Mr. Miller, do you have three copies of that?

Mr. Miller: I am sorry, Your Honor, we only had the one copy of the Financial Chronicle. We will be glad to supply copies for the Court's convenience.

(Article entitled "The Course of the Bond Market" on [fol. 1463] on page 177 of The Commercial and Financial Chronicle, New York, for January 8, 1938, was marked Respondents' Exhibit 1. A copy thereof follows.)

RESPONDENTS' EXHIBIT 1.

"The Course of the Bond Market"

The high-grade bond market and prices of United States Governments, which have both been pushing upward in an unspectacular but consistent rise since early in September,

again advanced this week. The price of eight Treasury bonds at 110.01 compares with last January's record high of 112.78, whereas Aaa's at 115.78 compare with 118.16 a year ago. As for lower grades, tendencies this week have been rather mixed. Aa's and A's took on some of the strength of Aaa's, but closed the week with little net change. Speculative utilities and industrials advances, but lower-grade rails recorded extensive declines, with a major default in interest payments on several large Erie RR. issues.

High-grade railroad bonds have displayed a mixed undertone during the week, and in most instances closing prices were a shade lower than last week. Norfolk & Western 4s, 1996, were off  $\frac{7}{8}$  at 118 $\frac{7}{8}$ ; Atchison gen. 4s, 1995, [fol. 1469] advanced  $\frac{3}{8}$  to 109 $\frac{3}{8}$ ; Texas & Pacific 5s, 2000, declines  $\frac{5}{8}$  to 115. Announcement of interest default on six of Erie's obligations has been the outstanding feature in the medium grade and speculative bond market this week. Concomitant with this, many new 1937-38 lows were registered in this group when fear developed regarding the ability of many other weak roads to remain in a solvent position. Those which suffered losses were Baltimore & Ohio, Illinois Central, Boston & Maine, and Lehigh Valley bonds. At the close of the week, however, a brisk recovery was witnessed on the announcement by Jesse Jones that the Reconstruction Finance Corporation was willing to aid the weak credit roads with RFC loans; at the same time, the approval of Baltimore & Ohio's loan of \$8,223,000 was announced.

Utility bonds have been little affected by the Supreme Court decisions on Monday and have moved in a very narrow range. In the latter part of the week medium grades responded moderately to strength in the stock market. Among issues recording fair gains were Associated Gas & Electric 5 $\frac{1}{2}$ s, 1938, which closed at 65, up 3; Georgia Power & Light 5s, 1978, advanced 4 $\frac{1}{2}$  to 64 $\frac{1}{2}$ ; Interstate [fol. 1470] Public Service 4 $\frac{1}{2}$ s, 1958, gained 2 $\frac{1}{2}$  at 66; Northwestern Public Service 5s, 1957, rose 5 $\frac{1}{2}$  to 86 $\frac{1}{2}$ . Highest-grade utilities have been virtually at a standstill.

A good degree of strength has characterized the industrial bond market this week, in contrast to last week, when receding tendencies prevailed. In the steel group, Bethlehem Steel 4 $\frac{1}{2}$ s, 1960, have risen 3 $\frac{1}{8}$  to 103 $\frac{3}{8}$ , and Otis Steel 4 $\frac{1}{2}$ s, 1962, have advanced 5 $\frac{1}{2}$  to 71. Metal bonds have been fea-

tured by a rise in the Phelps Dodge conv.  $3\frac{1}{2}$ s, 1952, of  $2\frac{3}{4}$  to  $105\frac{3}{4}$ . In the automobile group, Studebaker cov. 6s, 1945, have risen  $5\frac{1}{2}$  points to  $67\frac{1}{2}$ . Among meat packing bonds, Armour & Co. (Del.) 4s, 1955, advanced  $5\frac{1}{2}$  points to  $92\frac{1}{2}$ . On the other hand, retail issues have reced., Allied Stores  $4\frac{1}{2}$ s, 1950, falling 1 point to 90.

◦ There has been a slightly improved sentiment market-wise towards defaulted South American issues, which have firmed up moderately. El Salvador 8s, however, broke about 14 points following the renewed default. Among European issues, Polish bonds have continued strong, Italians have been mixed, while Germans have held their own. [fol. 1471] Japanese issues have declined.

Moody's computed bond prices and bond yield averages are given in the following tables:

[fol. 1471]

## RESPONDENTS' EXHIBIT 1

## "Moody's Bond Prices (Revised)"

(Based on Average Yields)

1938 Daily Averages	U. S. Govt. Bonds	All 120 Domestic Corp.*	120 Domestic Corporate* by Ratings				120 Domestic Corporate by Groups*		
			Aaa			Baa	R.R.	P.U.	Indus.
			Aaa	Aa	A				
Jan. 7.....	109.97	95.62	115.78	107.88	95.46	72.00	81.35	99.83	108.46
6.....	110.01	95.29	115.78	107.88	95.13	71.57	81.22	99.48	108.08
5.....	109.90	95.13	115.35	107.88	94.97	71.25	81.09	99.48	107.49
4.....	109.69	95.29	115.57	107.88	95.13	71.46	81.61	99.48	107.11
3.....	109.69	95.46	115.35	108.27	95.29	71.68	82.13	99.48	106.92
Dec. 31, '37.....	109.69	95.46	115.14	108.08	95.13	72.11	82.66	99.31	106.54
High 1937.....	112.78	106.54	118.16	113.89	104.67	92.43	101.41	108.17	112.45
Low 1937.....	107.01	93.37	109.64	105.98	93.21	69.27	79.57	96.28	104.30
1 Yr. Ago.....									
Jan. 7, '37.....	112.62	106.17	117.94	113.68	104.48	91.66	101.06	105.98	112.05
2 Yrs. Ago.....									
Jan. 7, '36.....	108.03	98.62	111.43	107.69	95.78	83.06	90.59	99.14	106.92

\* These prices are computed from average yields on the basis of the "typical" bond (4% coupon, maturing in 30 years), and do not purport to show either the average level or the average movement of actual price quotations. They merely serve to illustrate in a more comprehensive way the relative levels and the relative movement of yield averages, the latter being the truer picture of the bond market."

[fol. 1472]

## "Moody's Bond-Yield Averages" (Revised)

(Based on Individual Closing Prices)

	All 120 Domestic Corp.	120 Domestic Corporate* by Ratings				120 Domestic Corporate-by Groups*				30 Foreigns
		Aaa	Aa	A	Baa	R.R.	P.U.	Indus.		
1938 Daily Averages										
Jan. 7	4.26	3.18	3.57	4.27	6.03	5.24	4.02	3.54	5.75	
Jan. 6	4.28	3.18	3.57	4.29	6.07	5.25	4.03	3.56		
Jan. 5	4.29	3.20	3.57	4.30	6.10	5.26	4.03	3.59		
Jan. 4	4.28	3.19	3.57	4.29	6.08	5.22	4.03	3.61		
Jan. 3	4.27	3.20	3.55	4.28	6.06	5.18	4.03	3.62		
Dec. 31, '37	4.27	3.21	3.56	4.29	6.02	5.14	4.04	3.64	5.70	
High 1937	4.40	3.48	3.67	4.41	6.29	5.38	4.22	3.76	5.78	
Low 1937	3.64	3.07	3.27	3.74	4.46	3.92	3.66	3.74	5.08	
1 Yr. Ago										
Jan. 7, '37	3.66	3.08	3.28	3.75	4.51	3.94	3.67	3.36	5.43	
2 Yrs. Ago										
Jan. 7, '37	4.08	3.39	3.58	4.25	5.11	4.58	4.05	3.62	6.30	


\* These prices are computed from average yields on the basis of one "typical" bond (4% coupon, maturing in 30 years), and do not purport to show either the average level or the average movement of actual price quotations. They merely serve to illustrate in a more comprehensive way the relative levels and the relative movement of yield averages, the latter being the truer picture of the bond market."

Respondents rest.

Evidence closed.



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38-69



## [fol. 1473] MOTION FOR LEAVE TO AMEND BILL

Mr. Saul: I would like to move, if Your Honors please, to amend paragraph 8 of the bill. Paragraph 8 alleges the unconstitutionality of Section 310, and in reciting the sections that paragraph inadvertently omitted (a). It alleges sub-paragraphs (b), (c), and (d) are unconstitutional, and it should have included (a). Mr. Miller tells me there is no objection to having the bill amended.

Mr. Miller: We have no objection.

Judge Davis: Motion granted.

Mr. Saul: I will file a formal amendment.

Mr. Miles: That is the company's case, Your Honors, except for the argument.

Judge Davis: Is there anything further, gentlemen?

Mr. Miller: No, we have no further witnesses, if the Court please.

Mr. Miles: Of course, all we will be interested in is the question of the date for argument and for the filing of briefs, Your Honors.

Judge Davis: I suppose you will submit briefs, and those will have to refer to the testimony.

[fol. 1474]

## COLLOQUY

Judge Davis: Gentlemen, I can't tell just when you will get that done, but along about the first of March you may make application. I assume your briefs will be in by that time, and you may make application then for a date and we will give you a date as early as we can.

Mr. Miller: If the Court please, the reporter says approximately one week will be necessary for transcribing the record, and I would suggest that within three weeks, Mr. Saul, after you receive the testimony you could file your brief, could you not?

Mr. Saul: I think so, and then we can make our application to the Court for the time, fixing an argument.

Judge Davis: Then you can file briefs thereafter within what time?

Mr. Miller: Within three weeks, we would like.

Judge Davis: Three and three is six, and one is seven; well, in about seven weeks you can make your application, then.

Mr. Cohen: There is one other fact, I think, that should [fol. 1475] be called to the attention of the Court, that the final argument not coming up in this matter until March, I understand that the bond of the Edison in this matter is in the sum of seventy-five thousand. Is that correct?

Mr. Saul: That is correct.

Mr. Cohen: I think that was placed with the thought that the matter would be heard, at least, on January 17th, when we would know, have a better idea of how long the proceeding would take and the possibility of increasing the bond one way or the other.

Mr. Saul: We would be very glad to increase the bond to one hundred and fifty thousand dollars, if that will make you feel more comfortable, with the understanding the injunction continues.

Judge Davis: That takes in the variation of the dollar.

Mr. Miller: We would suggest, if the Court please, that we might take advantage of Mr. Saul's offer or the previous bond to give us the NyPanj as additional security.

Mr. Miles: We don't think that is necessary.

Judge Davis: Well, if the bond is increased I guess that will be sufficient.

[fol. 1476] Mr. LaBrum: And the injunction is continued indefinitely.

Reported by Everett G. Rodebaugh.

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[fol. 1477] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO SUBSTITUTION—Filed June 21, 1938

It is hereby stipulated and agreed by and between counsel for the respective parties that the caption of and bill of complaint and answer filed in the above-entitled matter be amended so as to substitute Arthur Colegrove, who has been appointed as successor of Guy K. Bard to the office of Public Utility Commissioner, as a party respondent in place of said Guy K. Bard with the same force and effect as if said Arthur Colgrove had originally been a party respondent in this action.

(S.) Walter Biddle Saul, Attorney for Complainant.

(S.) Samuel G. Miller, Assistant Counsel for Respondents. (S.) Edward Knuff, Counsel for Respondents.

[fol. 1478] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO SUBMISSION, ETC.—Filed November 28,  
1938

It is Stipulated and Agreed, this 15th day of February, 1938, by and between Edward Knuff, Esq., counsel, and Samuel G. Miller, Esq., assistant counsel, for Pennsylvania Public Utility Commission, and Walter Biddle Saul, Esq., and Clarence W. Miles, Esq., of counsel for Edison Light & Power Company, that the application of complainant in the above-entitled matter, in which the Statutory Court sitting in the United States District Court for the Eastern District of Pennsylvania issued a temporary restraining order which is now in effect, be submitted to and acted upon by the Court as an application for a permanent injunction, and that any decree entered pursuant thereto shall be and become a final decree.

(S.) Edward Knuff, Esq., Counsel, Pennsylvania Public Utility Commission. (S.) Samuel G. Miller, Esq., Asst. Counsel, Pennsylvania Public Utility Commission. (S.) Walter Biddle Saul, Esq., Clarence W. Miles, Esq., of Counsel, Edison Light & Power Company.

[fol. 1479] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1937

No. 9893

EDISON LIGHT & POWER COMPANY, a Corporation, Complainant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard and Donald Livingston, individually and as Constituting the Public Utility Commission of Pennsylvania, Respondents.

Before Buffington and Davis, Circuit Judges, and Dickinson, District Judge

**Findings of Fact, Conclusions of Law and Opinion**—Filed  
October 10, 1938

DAVIS, Circuit Judge:

**FINDINGS OF FACT**

1, Complainant, Edison Light & Power Company, a public utility corporation, duly organized under the laws of

Pennsylvania with principal office and place of business in York, Pennsylvania, is engaged in the business of generating, transmitting, distributing and selling electric energy.

2. Respondents are Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Donald Livingston and Arthur Colegrove, (successor to Guy K. Bard, formerly a member of the Public Utility Commission of Pennsylvania and now Attorney General of that Commonwealth) the persons constituting the Pennsylvania Public Utility Commission, an administrative body of the Commonwealth of Pennsylvania.

3. Respondent, Denis J. Driscoll, resides in the Borough of St. Mary's, in the Western District of Pennsylvania; respondent, Thomas C. Buchanan, resides in the Borough of Beaver, in the Western District of Pennsylvania; respondent, Donald Livingston, resides in the Borough of Media, in the eastern District of Pennsylvania; and respondent Arthur Colegrove resides at —.

[fol. 1480] 4. The amount in controversy in this case exceeds the sum or value of \$3,000.00 exclusive of interest and costs.

5. On January 27, 1936, the Public Service Commission of the Commonwealth of Pennsylvania, the predecessor of respondents, instituted an inquiry and investigation on its own motion for the purpose of determining the justness and reasonableness of complainant's rates. Hearings beginning October 28, 1936, and ending June 23, 1937, were held before respondents and their predecessor, at which testimony and exhibits were introduced by both parties.

6. On June 15, 1937, respondents notified complainant of its opportunity to present, at a hearing to be held on June 23, 1937, such evidence as it might desire in connection with the consideration by the commission of the imposition of temporary rates, pending final determination of the rate proceeding.

7. Complainant introduced no evidence in specific connection with the possible imposition of temporary rates at the hearing held June 23, 1937, and the respondents set July 5, 1937, as the date for argument which was had on the date fixed: At these hearings complainants contended that the Act pursuant to which these rates were fixed was uncon-



stitutional and the case was completed and ready for the fixing of permanent rates.

8. On July 13, 1937, the commission, without having first given complainant preliminary notice of its findings and conclusions and opportunity to be heard in connection therewith, entered an order directing complainant to file temporary tariff schedules reducing its annual gross operating revenue by about \$435,000.00.

9. Two days thereafter, on July 15, 1937, the Superior Court of Pennsylvania filed its opinion in *Pennsylvania Power & Light Company v. Public Service Commission et al.*, 193 Atl. 427, 128 Pa. Superior Court, 195, in the course of which the Court intimated that the commission should, whenever practicable, construct a tariff of specific reasonable rates and order its adoption by the utility involved. On July 27, 1937, the commission issued a report and order rescinding its report and order of July 13, 1937, [fol. 1481] insofar as it was deemed inconsistent with the cited opinion of the Superior Court. The effect of the order of July 27, 1937, was to prescribe a specific schedule of rates in place of those theretofore charged by the utility, the amount of the ordered reduction and the bases of its computation remaining unchanged.

10. On August 2, 1937, complainant filed a bill, which was heard by a Federal Statutory Court, praying for an injunction against the enforcement of the commission's order of July 27, 1937, on the grounds that it violated the Fourteenth Amendment to the Constitution of the United States, that Section 310 of the Pennsylvania Public Utility Act, under which the order was issued, was contrary to the Fourteenth Amendment of the Constitution of the United States; that it imposed confiscatory rates; and that the commission had made no findings to support its conclusions as to the allowable rate base. Oral argument was had on August 9, 1937. On October 15, the Federal Statutory Court issued a permanent injunction restraining the commission from enforcing its temporary order and the rates determined therein.

11. Subsequently, on November 17, 1937, certain additional exhibits of complainant and commission were made part of the rate proceedings by stipulation. (These were



introduced into evidence before this court on January 17, 1938, as part of the record.)

12. Thereafter, on November 30, 1937, the commission issued a supplemental report and order prescribing temporary rates, calculated as previously, to effect a reduction of \$435,000.00.

13. On December 7, 1937, complainant, without first having been given notice of commission's findings and conclusions and opportunity to be heard in connection therewith, was served with a copy of the supplemental report and order.

14. On December 14, 1937, complainant filed a bill in the United States District Court for the Eastern District of Pennsylvania, praying for an injunction for the reasons; inter alia, that the order imposed confiscatory temporary rates; that section 310 of the Pennsylvania Public Utility Act, under which the commission acted was unconstitutional; and that the commission had applied the wrong [fol. 1482] provision of the Pennsylvania Public Utility Act to complainant.

15. On December 17, 1937, the Federal Statutory Court, specially convened under the provisions of section 266 of the Judicial Code, granted complainant a preliminary restraining order.

16. On January 17, 1938, hearing was held by the Court and testimony was taken upon motion for an interlocutory injunction. The restraining order was continued upon condition that complainant file a bond in the amount of \$150,000.00. The bond was filed and the parties stipulated that the matter be considered as an application for a permanent injunction. On May 9, 1938, argument was heard thereon and briefs were later filed by the parties.

17. Complainant's rate case expense in the proceedings instituted by the commission totalled approximately \$178,375.00 up to November 15, 1937. No allowance for any of this expense was made by the commission in its order of November 30, 1937.

18. The rate case expense was necessarily incurred by complainant in an investigation instituted on the commission's own motion, and it was paid in part for the prepa-

ration and presentation of evidence, exhibits and other data for the use of the commission.

19. The commission's order of November 30, 1937, excluded from consideration as an operating expense the item of \$20,593.00 increased salary expense which complainant is required to pay and is paying to certain of its officers and employees pursuant to resolution of its Board of Directors passed October 28, 1937.

20. The commission made no allowance for the loss in net revenue to the complainant of approximately \$15,089.00 annually which will result from the abandonment of trolley service by the York Railways Company which now and for many years has purchased power from complainant.

21. The commission, in its finding of reproduction cost new less accrued depreciation, made no deduction for capital donated to complainant by consumers.

22. The commission in its order of November 30, 1937, made no separate allowance for going concern value.

[fol. 1483] 23. The commission, in its finding of original cost depreciated, made no deduction for property used exclusively by York Railways Company.

24. The commission, in its report and order of November 30, 1937, found that \$5,250,000.00 represented the fair value of complainant's property for temporary rate purposes but the Company says the fair value of its property is \$5,866,081.00.

25. The commission, in its report and order of November 30, 1937, found that a rate of return of six per cent would be fair and reasonable for temporary rate purposes.

26. The commission, in its report and order of November 30, 1937, found that the annual operating revenues of complainant should not exceed the sum of \$1,697,829.00 for temporary rate purposes.

27. The commission, in its report and order of November 30, 1937, allowed \$164,000.00 for working capital for complainant's business. This allowance is supported in the record by substantial evidence.

28. The commission, in imposing temporary rates in this case, proceeded under the provisions of section 310 (a), (c), and (e) of the Public Utility Act.

29. Complainant does not have continuing property records. This requires the commission in fixing temporary rates to proceed under section 310 (b).

30. In fixing temporary rates to be charged by complainant, the commission proceeded under section 310 (a) which permits the prescription of temporary rates, in the case of a utility having continuing property records, which will produce a return of only 5% on original cost less accrued depreciation of the utility's physical property.

31. Section 310. (paragraphs (a) and (b)) permits the fixing of different rate bases for utilities, depending solely upon a method of bookkeeping, the existence or non-existence of continuing property records.

32. The commission's temporary rate order of November [fol. 1484] 30, 1937, sets no time limit for the duration of the temporary rates it prescribes.

#### CONCLUSIONS OF LAW

1. The complainant has no plain, speedy and adequate remedy, either at law or in equity, in the courts of the Commonwealth of Pennsylvania.

2. This court has jurisdiction of the subject matter and the parties.

3. The commission's order of November 30, 1937, is invalid and void because in fixing temporary rates under paragraph (a) of section 310 for complainant, a utility having no continuing property records, commission acted in direct violation of the mandatory provisions of the Public Utility Act which requires rates for complainant to be fixed under paragraph (b) of section 310.

4. The commission's order of November 30, 1937, is unconstitutional and void because it violates the procedural requirements of due process in the method used to determine the rate base for the prescription of temporary rates.

5. The commission's order of November 30, 1937, is unconstitutional and void under the Fourteenth Amendment of the Constitution of the United States because it takes the property of the complainant without just compensation therefor, in that it fails to permit the complainant to earn

a fair return on the fair value of its property used and useful in the public service.

6. The commission's order of November 30, 1937, is unconstitutional and void because it confiscates complainant's property.

7. The findings and conclusions of the commission's order of November 30, 1937, are not supported by substantial evidence.

8. The bill of complaint should be sustained and a permanent injunction issue enjoining and restraining the enforcement of the commission's order.

#### OPINION

This was a suit in equity brought by the Edison Light & Power Company, hereinafter called the company, to restrain [fol. 1485] the respondents, The Pennsylvania Public Utility Commission, hereinafter called the commission, and the persons composing the commission individually, from enforcing its "temporary rate" order of November 30, 1937, directing the company to file a tariff supplement effecting a reduction of approximately \$435,000 in its annual gross revenue.

It should be stated at the outset that this court is not a rate-making body. The function of fixing the rates of a public utility belongs to the Commonwealth. It has the right to control private corporations, whose business, necessarily monopolistic in character, is affected with a public interest. That control, where the fixing of rates is involved, is exercised through one of its agencies, the Public Utility Commission. In exercising this control, the rights of both the public and the corporation must be considered. The company is entitled to a fair return on a fair value of its property devoted to the public service. The return can not be so high as to exceed the value of the service to the consumer and can not be so low as to confiscate the property devoted to that service. In other words the company is entitled to ask a fair return upon the value of the property which it employs for the public convenience and the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth. Neither is entitled to anything more than these reciprocal rights.

The order in this case was made by the commission pursuant to section 310 (a) of the Public Utility Act of Pennsylvania of May 28, 1937, which provides as follows:

**"Temporary Rates.—(a)** The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided."

[fol. 1486] The company, feeling aggrieved by the order, made application for a statutory court pursuant to the provisions of section 266 of the Judicial Code. An order convening such court was signed on December 14, 1937 and on the same day a preliminary restraining order was entered against the commission upon the entry of a bond by the company for \$75,000. The motion for an interlocutory injunction came on for hearing on January 17, 1938. At the conclusion of the hearing, the restraining order was continued upon the filing of a bond by the complainant for \$150,000. It was agreed between the parties that the matter be treated as an application for a permanent injunction.

The company contends that this section (310(a)) is unconstitutional for the reason that it permits the commission to fix a temporary rate of only 5 per cent. of the original cost, less accrued depreciation of the physical property (when first devoted to public use) of the utility, thus basing the rate upon only one element of the utility's property instead of upon all of its property as the decisions of the Supreme Court require.

The Supreme Court in the leading case of *Smyth vs. Ames*, 169 U.S. 466, 547 said the following elements must



be considered in finding the fair value of the property of a public utility, devoted to the public use:

"And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

From the time of that decision until the present the Supreme Court in case after case has declared that these elements must be considered by rate-making bodies in fixing a fair return on the fair value of the property of a utility devoted to the public service. *Des Moines Gas Company v. City of Des Moines*, 238 U. S. 153; *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, et al.*, 262 U. S. 276; *St. Louis & O'Fallon [fol. 1487] Railway Co. et al. v. United States, et al.* 279 U. S. 461; *United Railways v. West*, 280 U. S. 234; *Los Angeles Gas & Electric Corporation v. Railroad Commission*, 289 U. S. 287; *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, 292, U. S. 290; *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U. S. 398; *West v. Chesapeake & Potomac Telephone Co.* 295 U. S. 662. The law of Pennsylvania is to the same effect. *Bangor Water Co. v. Public Service Commission*, 82 Pa. Superior 48; *City of Erie et al. v. Public Service Commission*, 278 Pa. 512. From the nature of the case, these elements, being property rights, must be considered in finding the present fair value of property. For instance, when we consider the constant increase or decrease in the cost of material and labor, the amount spent in permanent improvements, allowance for overheads, working capital, going concern value (which alone the company says is \$400,000 in this case) the present fair value of property may be very different from the original cost less accrued depreciation. A rate based upon this one element alone as provided in the Act, must, in many, if not all instances, be confiscatory.

The commission seeks to avoid this inevitable conclusion and the constitutional infirmities of the Act by saying that



it does not limit the commission in finding fair value to the consideration of the one element of original cost. It argues that because it "may" not "must", consider the one element only, the constitutionality of the Act is saved. In other words, it contends that the test of the constitutionality of an Act depends upon the exercise, and not upon the grant of power. The constitutionality of an Act, it says, depends upon what is done, and not upon what may be done under it. If this contention be true, the constitutionality of an act depends upon the will of men and not upon a rule of law. The mere statement of this contention shows its infirmity. *People v. Klinck Packing Co.*, 214 N. Y. 121.

Nor is the constitutionality of the Act saved by the provision in section 310(e) which provides that:

[fol. 1488] "If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the differences between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

When this question, in the case of *Edison Light & Power Company v. Driscoll*, 21 Fed. Supp. 1, was considered in the Middle District of Pennsylvania, the court said:

"Does the fact that the rates fixed are only temporary save the order from the inhibition of the constitution? We think it does not, and that this question is answered by the case of *Prendergast v. New York Telephone Company*, 262 U. S. 43, 49, 43 S. Ct. 466, 469, 67 L. Ed. 853, where the court said: 'Nor did the fact that the orders of the Commission, merely prescribed temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property

during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process.'

It has been argued that the recoupment provision of the Pennsylvania act avoids the infirmity in the New York act which the court pointed out in the Prendergast case. This argument in effect means that it is proper and legal to violate the Constitution if at some future time that violation may be corrected wholly or in part. In other words, it is perfectly all right and permissible to take one's money by force if by and by it may be partly returned to him. If that is so, how long may the Constitution be violated during which time the injured party is without remedy? May it be for a month, as provided in section 310(c) of the act (66 P.S. Pa. Sec. 1150(c), or for a trial period of six months or a year as provided in section 310(d) of the act (66 P.S. Pa. Sec. 1150(d)? Such interpretation of the constitutional requirement is unsound.

Further, the provision for recoupment is not entirely effective. It does not provide for interest of the money, which the company loses during the trial period, while the final rates are being fixed, and if it did so require, considerable portions of the principal lost, might never be recovered. The act provided that if the final rates are higher than the temporary rates, 'then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined' (section 310(e) of the act, 66 P. S. Pa. Sec. 1150(e) the sum lost on account of the temporary rates. But if the consumer discontinues [fol. 1489] the service or move out of the territory, as doubtless in a shifting population will be frequently done, the utility in many cases will be absolutely without remedy for section 305 of the act (66 P. S. Pa. Sec. 1145) abolishes 'deposits to secure future payments'."

What was said there is applicable here and the provision in subsection 310 (e) does not save the constitutionality of this section.

We think that section 310 (a) of the Act is unconstitutional and what was done pursuant to it is invalid.

If, however, we are in error about this and the section is constitutional, we think that the order is invalid for the reason that it is confiscatory.

The final report of the commission and the briefs of the parties contain many analyses and a mass of figures which it is difficult for one not a certified public account- or technical engineer to understand. Some of the figures may be unimportant, but others are important. The commission found that the rate base or fair value of the company's property for the purpose of prescribing temporary rates is \$5,250,000. Another important fact is that the operating revenue received by the company for the year ended September 30, 1937 was \$2,202,329. In order to determine the net profit, the expenses incurred in operation, the taxes as adjusted and the amount the commission ordered to be deducted from the revenue must be subtracted from this sum. According to the commission these items aggregate \$1,817,829, which subtracted from \$2,202,329 leaves a net profit of \$384,500. But the company contends that in addition to the items allowed by the commission, the following allowances should be made: \$178,375, rate case expenses; \$20,593 increased salary expenses to officers and employees as provided by its board of directors; \$15,089 realized by the company on sale of electric energy to York Railways Company which was included in the operating revenue. According to the contention of the company, therefore, the expenses etc. which should have been allowed amount to \$2,010,680, which subtracted from the income leaves a net profit of \$191,649. Should these additional expenses be allowed? [fol. 1490] As to the rate case expense of \$178,375, the suit was started by the commission which required the company to produce much of the evidence necessitating the expense for which allowance is sought. There is no contention that the expense was unreasonable or in any manner inflated. The commission disallowed this expense on the ground, in part, at least, that the company in the past received excessive rates, but this position is untenable, Board of Public Utility Commission v. New York Telephone Co., 271 U. S. 23, 31, and on the further ground that part of the expense was incurred under the Public Service Company law which was superseded by the Public Utility Act, effective June 1, 1937. The former law included no provision for assessment of the costs of investigation or general regulatory expenses against public utilities. The evidence produced under the predecessor of the Pennsylvania Public Utility Commission was used by the latter. In any event the company did not ask the allow-

ance of the expense on the ground that the commission has the right to assess the costs, but on the ground that it was a reasonable expense honestly and necessarily incurred, actually paid and, therefore, ought to be allowed in fixing a fair return. It is the policy of the courts to allow rate case expenses if the complaint of the utility is not unfounded and if the cost of the proceedings have not been swollen by untenable objections. In determining what the rate of return on the property of a utility shall be, "the commission must give heed to all legitimate expenses that will be charges upon income during the term of regulation, and in such a reckoning the expenses of the controversy engendered by the ordinance must have a place like any others." In speaking of the allowance of expenses of the rate litigation, the Supreme Court further said: "We think they must be included among the costs of operation in the computation of a fair return." *West Ohio Gas Co. v. Public Utilities Commission*, 294 U. S. 63, 73, 74.

{fol. 1491} Increased salary expenses required to be paid by the company to its officers and employees pursuant to a resolution by its board of directors, if reasonable, should be allowed. The evidence does not show these increases to be unreasonable or exorbitant. A commission may regulate but not manage a utility. It "is not empowered to substitute its judgment for that of the directors of the corporation." *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U. S. 276, 289.

We think that the loss of \$20,593 included in the revenue to the company on the sale of energy to the York Railway Company at and upon the abandonment of that company should have been allowed by the commission. As we understand it the abandonment is certain and is not denied.

The other item in dispute grows out of the adjustment of taxes because of the reduction in revenue of \$435,000 ordered by the commission. The original amount of taxes paid by the company was \$333,649 and the commission allowed a reduction of \$127,249 leaving a balance of \$206,400 to be paid by the company. The company, on the other hand, says that \$148,455 should have been allowed, leaving a balance of \$185,194 to be paid. It is not clear just how this difference of \$21,206 between them arose, but it does not have a decisive bearing on the case, for the reason that if the contention of the company is correct, it decreases the expense, increases the profit and the rate of return.

If these allowances are made, as we think they should be, the return, as above stated, on the fair value of \$5,250,000 found by the commission is 3.65%. If \$5,866,081 is taken as the rate base, the return allowed is 3.27%. Either, under the facts of the case, is confiscatory.

The commission, however, says that if the rate case expense is allowed and amortized over a period of five years, the profit of operation would be greater and the return would not be confiscatory. But however that might be, it was not allowed in any form, for a single year or amortized, and we must pronounce upon the order as made.

[fol. 1492] It follows that the company is entitled to a permanent injunction restraining the commission from enforcing the temporary rates prescribed in accordance with the prayer of the bill.

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[fol. 1493] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE—Filed October 14, 1938

And Now, to wit, this 14th day of October, 1938, this cause having come on for hearing on application for permanent injunction on January 17, 1938, and argument having been heard by the Court on May 9, 1938, and after consideration thereof and an opinion thereon filed on October 10, 1938, it is

Ordered, Adjudged and Decreed that respondents and each of them individually in their own respective rights, and in their official capacities as members of the Pennsylvania Public Utility Commission, and their respective successors in office, and all those acting or claiming to act under their authority or in aid or assistance of them, be and hereby are permanently enjoined and restrained from in any manner enforcing or attempting to enforce the temporary rates prescribed in the supplemental report and order of the Pennsylvania Public Utility Commission dated November 30, 1937.

[fol. 1494] Ordered, Adjudged and Decreed that respondents and each of them, individually in their own respective rights and in their official capacities as members of the Pennsylvania Public Utility Commission, and their respec-



tive successors in office, and all those acting or claiming to act under their authority or in aid or assistance of them, be and hereby are permanently enjoined and restrained from instituting or threatening to institute, or imposing against complainant or any of its officers, directors, servants, agents, or employees, any civil or criminal proceeding, or action for the imposition of any penalty, in any manner or form before any judge or court of any jurisdiction, based upon any claimed violation by complainant of, or noncompliance with, said supplemental report and order of the Pennsylvania Public Utility Commission dated November 30, 1937. It is further

Ordered, Adjudged and Decreed that complainant's bond in the sum of \$150,000.00, which was filed with this Court conditioned upon prompt repayment by complainant to its customers, in the event that the prayers of its bill of complaint were denied, of the sums of money received by it from its customers for electric service supplied on and after December 19, 1937, under its existing rate schedules to the extent that such sums of money were in excess of the rates and charges ordered by the respondents in their order of November 30, 1937, together with interest on such excess charges at the rate of six per cent. (6%) per annum, be released, discharged and cancelled, and complainant relieved from any liability thereunder.

[fol. 1495] Further Ordered, Adjudged and Decreed that complainant recover from respondents all the costs of this action.

(Sgd.) J. Warren Davis, J.

[fol. 1496] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed November 18, 1938

To the Honorable Oliver B. Dickinson, District Judge:

Conceiving themselves aggrieved by the final Decree and Judgment of the United States District Court for the Eastern District of Pennsylvania, made and entered in the above entitled cause on the Fourteenth day of October, 1938, the respondents therein appeal from said Judgment



to the Supreme Court of the United States and pray that said appeal may be allowed.

Guy K. Bard, Attorney General. Samuel Graff Miller, Edward Knuff, Counsel for Respondent. Herbert B. Cohen, Attorney for Intervenors.

Dated this 18th day of November, 1938.

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[fol. 1497] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 18, 1938

Upon motion of Guy K. Bard, Edward Knuff, and Samuel Graff Miller, solicitors and counsel for respondents, and Herbert B. Cohen, solicitor and counsel for intervenors, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree and order filed and entered the Fourteenth day of October, 1938, in the above entitled case granting permanent injunction with costs and cancelling plaintiff's bond, be, and the same is hereby allowed; and it is further ordered that a certified transcript of the record, testimony, exhibits, & calculations, and all proceedings be forthwith transmitted to the Supreme Court of the United States, under the rules of the Supreme Court in such cases made and provided; and it is further ordered that a citation issue returnable thirty (30) days from the date hereof. Bond in \$500.00 to be approved.

By the Court.

(S.) Buffington, J., District Judge.

Dated this 18th day of November, 1938.

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[fol. 1498] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 18, 1938

Pennsylvania Public Utility Commission, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Arthur Colegrove (substituted for Guy K. Bard), and Donald Liv-

ingston, respondents, in the above entitled cause, also Utility Consumers League of York, Pennsylvania, intervenors in the said cause, in connection with their appeal from the decree entered in this cause the Fourteenth day of October, 1938, by the District Court of the United States, specially constituted under the provisions of Section 266 of the Judicial Code, file the following assignment of errors upon which they will rely in their prosecution of the said appeal from the said decree, and say that in the record, proceedings and decree therein manifest error has intervened to the prejudice of the respondents and intervenors as follows, to wit:

1. The Court erred in holding unconstitutional Section 310 of Article III of the Public Utility Law (Act of May 28, 1937 Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated 1937 Supplement, Title 66, Section 1150).

[fol. 1499] 2. The Court erred in failing to make a finding as to the value of the complainant's property.

3. The Court erred in failing to find that the Pennsylvania Public Utility Commission findings of reproduction cost depreciated, original cost depreciated, fair value and rate of return, all for temporary rate purposes, were supported by substantial record evidence.

4. The Court erred in holding that the temporary rates fixed by Pennsylvania Public Utility Commission were confiscatory and in failing to hold that said rates were adequate and proper.

5. The Court erred in holding that, in computing temporary rates, Pennsylvania Public Utility Commission had improperly disallowed operating expenses claimed by complainant, and in failing to hold that Pennsylvania Public Utility Commission had allowed all proper operating expenses.

6. The Court erred in failing to dismiss the bill of complaint for want of equity, and in failing to dissolve the temporary restraining order theretofore entered.

7. The Court erred in making and entering its final decree of October 14, 1938, permanently enjoining enforcement of the temporary rates prescribed by Pennsylvania Public

Utility Commission on November 30, 1937, cancelling complainant's bond, and imposing all costs on respondents.

[fol. 1500] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PRAECIPE FOR PREPARATION AND CERTIFICATION OF  
TRANSCRIPT OF RECORD—Filed December 5, 1938

To the Clerk of the United States District Court for the  
Eastern District of Pennsylvania:

SIR:

Please prepare a transcript of record to be certified and transmitted to the Supreme Court of the United States pursuant to the appeal heretofore taken in this case and include therein the following:

1. Bill of Complaint.
2. Affidavits in support of Plaintiff's motion for Restraining Order.
3. Answer of Respondents to Bill of Complaint.
4. Answer of Intervenor to Bill of Complaint.
5. Transcript of Minutes before Public Service Commission filed. (3 Vol.).
6. Transcript of Minutes and Exhibits before U. S. District Court.
7. Stipulation substituting Commissioner Colēgrove for Commissioner Bard.
- [fol. 1501] 8. Respondents' Exhibit 17 (Revised), Summary of Reproduction Cost Estimate as of November 30, 1936, from Day & Zimmerman Report.
9. Respondents' Exhibit 21 (Revised), Summary of Reproduction Cost Estimate as of November 30, 1936, from Day & Zimmerman Report, with deductions from Accounts 204-215, inclusive, for property used for steam production, property not used and useful, and property used exclusively for York Railways Company, and with adjustments and allowance for indirect costs.
10. Respondents' Exhibit 23, Estimate of Original Cost as of June 30, 1936.
11. Respondents' Exhibit 24, Earnings and Dividend Record of Predecessor Companies.

12. Respondents' Exhibit 26, Details of Computation of Original Cost of Predecessor Companies.

13. Respondents' Exhibit 27, Statement of Income Available for Return of Predecessor Companies as reflected in capital stock tax returns, with adjustments.

14. Respondents' Exhibit 31, Discount, Brokerage or Underwriting Commission and Mechanical Expense on all Security Issues approved by Commission to November 15, 1936.

15. Respondents' Exhibit 32, Bond Yields as reported by Survey of Current Business issued by United States Department of Commerce.

16. Respondents' Exhibit 33, Yields to Maturity of Security Issues approved between July 1, 1933, and May 7, 1937, which were for a term of ten years or more, bore a fixed return in dollars, were of a type generally marketable and were actually sold for cash to non-affiliated interests.

17. Respondents' Exhibit 34, Bond Prices and Yields of Pennsylvania electric utilities.

18. Respondents' Exhibit 35, New York Money Rates from January 1, 1932, to April 23, 1937.

19. First four sheets of Respondents' Exhibit 36, Corporation Profits and Earnings on Common Stocks arranged according to Ratios of Earnings to High Market Prices of Common Stocks.

20. Complainant's Exhibit 1, Capitalization of York Railways Company, Subsidiary and Predecessor Companies.

[fol. 1502] 21. Complainant's Exhibit 7, 1936 Increment Cost of Service to York Railways Company and Profit to Complainant.

22. Complainant's Exhibit 8, Page 1, Summary of Reproduction Cost Estimate as of November 30, 1936.

23. Complainant's Exhibit 9, Summary Sheet 1, Day & Zimmerman Estimate of Original Cost.

24. Complainant's Exhibit 12, Chart showing Distribution of Salaries of Officers and Employees to the Various Classes of Utilities on the Basis of Services rendered during the year ended December 31, 1936.

25. Complainant's Exhibit 15, Net Operating Earnings adjusted to show Increase in Operating Expense which would be Experienced by Complainant if Joint Operating Agreement with Affiliated Companies were not in Effect, the date being for the year ended December 31, 1936.

26. Complainant's Exhibit 17, Excess or Deficiency of Income of Predecessor Companies Based on Return of Eight

Per Cent Applied to Fixed Capital and Working Capital Investment.

27. Complainant's Exhibit 18, Summary of Reproduction Cost Estimates of Used and Useful Property as of November 30, 1936, and May 31, 1937.

28. Complainant's Exhibit 19, Statement of Net Operating Earnings for Twelve Months ended September 30, 1937, with Reflection of Unrecorded Operating Expense Items.

29. Complainant's Exhibit 19a, Details of Operating Revenues, Expenses and Taxes for year ended September 30, 1937.

30. Complainant's Exhibit 19d, Resolution Relating to Discontinuance of Existing System of Allocation of Salaries among Affiliated Corporations.

31. Complainant's Exhibit 20, Statement of Effect of Pay-roll Increases.

32. Complainant's Exhibit 21, Statement of Rate Case Expenses to November 15, 1937.

33. Complainant's Exhibit 22, Additions to Fixed Capital, December, 1936, to September, 1937.

34. Complainant's Exhibit 23, Detail of Operating Expenses for year ended September 30, 1937.

[fol. 1503] 35. Stipulation of February 15, 1938, Submitting Matter for Final Decree.

36. Opinion, Davis, C. J., Buffington, C. J., and Dickinson, D. J., Concurring, Granting Permanent Injunction and Making Certain Findings of Fact and Conclusions of Law.

37. Decree Granting Perpetual Injunction with Costs and Cancelling Plaintiff's Bond.

38. Petition of Respondents and Intervenors for Appeal and Order of Court Allowing Appeal.

39. Assignment of Errors.

40. Statement of Jurisdiction.

41. Stipulation of Counsel and Amended Praecept For Transcript of Record.

42. Citation.

43. Clerk's Certificate.

And such other matters as, under the Rules of the Supreme Court of the United States, you may be required to certify.

(S.) Samuel Graff Miller, Counsel for Appellants.

It is hereby stipulated on behalf of Appellee that the matters set forth in the above amended praecipe for preparation



and certification of Transcript of Record constitute all of the matters necessary to be transmitted as the record in the above captioned appeal.

(S.) J. Harry LaBrum, Counsel for Appellee.

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[fols. 1504-1510] Citation, in usual form, showing service on J. Harry La Brum, filed November 18, 1938, omitted in printing.

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[fol. 1511] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBSTITUTION—Filed December 5, 1938

It is hereby stipulated and agreed by and between counsel for the respective parties that the captiop of the bill of complaint and answer filed in the above-entitled matter, as amended, be further amended so as to substitute John Sullivan, who has been appointed as successor of Arthur Colegrove to the office of Public Utility Commissioner, as a party respondent in the place of the said Arthur Colegrove, with the same force and effect as if said John Sullivan had originally been a party respondent in this action.

J. Harry La Brum, Attorney for Complainant.  
Samuel Graff Miller, Assistant Counsel for Respondents. Edward Knuff, Counsel for Respondents.

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[fol. 1511-A] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 1512] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed December 6, 1938

Pennsylvania Public Utility Commission, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, and Donald



Livingston, and Utility Consumers League of York, Pennsylvania, appellants in connection with this appeal, file the following statement of points upon which they will rely in their prosecution of the said appeal, to wit:

1. The court below erred in holding unconstitutional Section 310 of Article III of the Public Utility Law (Act of May 28, 1937, P. L. 1053, P. S. A. 1937, Sup. Tit. 66 § 1150).
2. The court below erred in failing to make a finding as to the value of the property of appellee.
3. The court below erred in failing to find that the Pennsylvania Public Utility Commission findings of reproduction cost depreciated, original cost depreciated, fair value and [fol. 1513] rate of return, all for temporary rate purposes, were supported by substantial record evidence.
4. The court below erred in holding that Pennsylvania Public Utility Commission had, in computing temporary rates, improperly disallowed certain operating expenses claimed by appellee.
5. The court below erred in making and declaring its final decree of October 15, 1938, permanently enjoining enforcement of the temporary rates prescribed by Pennsylvania Public Utility Commission on November 30, 1937, cancelling appellee's injunction bond and imposing all costs on Pennsylvania Public Utility Commission and its members.

The appellant represents that the parts of the record necessary for the consideration of these points are as follows:

1. Bill of Complaint.
2. Affidavits in support of Plaintiff's motion for Restraining Order.
3. Answer of Respondents to Bill of Complaint.
4. Answer of Intervenor to Bill of Complaint.
5. Transcript of Minutes before Public Service Commission and Pennsylvania Public Utility Commission.
6. Transcript of Minutes and Exhibits before U. S. District Court.
7. Stipulation substituting Commissioner Colegrove for Commissioner Bard.

[fol. 1514] 8. Respondents' Exhibit 17 (Revised), Summary of Reproduction Cost Estimate as of November 30, 1936, from Day & Zimmermann Report.

9. Respondents' Exhibit 21 (Revised), Summary of Reproduction Cost Estimate as of November 30, 1936, from Day & Zimmermann Report, with deductions from Accounts 204-215, inclusive, for property used for steam production, property not used and useful, and property used exclusively for York Railways Company, and with adjustments and allowance for indirect costs. (Printed Page 996.)

10. Respondents' Exhibit 23, Estimate of Original Cost as of June 30, 1936. (Page 1012.)

11. Respondents' Exhibit 24, Earnings and Dividend Record of Predecessor Companies. (Page 1015.)

12. Respondents' Exhibit 26, Details of Computation of Original Cost of Predecessor Companies. (Page 1021.)

13. Respondents' Exhibit 27, Statement of Income Available for Return of Predecessor Companies as reflected in capital stock tax returns, with adjustments. (Page 1025.)

14. Respondents' Exhibit 31, Discount, Brokerage or Underwriting Commission and Mechanical Expense on all Security Issues approved by Commission to November 15, 1936. (Page 1041.)

15. Respondents' Exhibit 32, Bond Yields as reported by Survey of Current Business issued by United States Department of Commerce. (Page 1042.)

16. Respondents' Exhibit 33, Yields to Maturity of Security Issues approved between July 1, 1933, and May 7, 1937, which were for a term of ten years or more, bore a fixed return in dollars, were of a type generally marketable and were actually sold for cash to non-affiliated interests. (Page 1045.)

17. Respondents' Exhibit 34, Bond Prices and Yields of Pennsylvania electric utilities. (Page 1046.)

18. Respondents' Exhibit 35, New York Money Rates from January 1, 1932, to April 23, 1937. (Page 1050.)

19. First four sheets of Respondents' Exhibit 36, Corporation Profits and Earnings on Common Stocks arranged according to Ratios of Earnings to High Market Prices of Common Stocks. (Page 1051.)

20. Complainant's Exhibit 1, Capitalization of York Railways Company, Subsidiary and Predecessor Companies. (Page 1071.)

[fol. 1515] 21. Complainant's Exhibit 7, 1936 Increment Cost of Service to York Railways Company and Profit to Complainant. (Page 1086.)

22. Complainant's Exhibit 8, Page 1, Summary of Reproduction Cost Estimate as of November 30, 1936. (Page 1088.)

23. Complainant's Exhibit 9, Summary Sheet 1, Day & Zimmermann Estimate of Original Cost. (Page 1095.)

24. Complainant's Exhibit 12, Chart showing Distribution of Salaries of Officers and Employees to the Various Classes of Utilities on the Basis of Services Rendered during the year ended December 31, 1936. (Page 1098.)

25. Complainant's Exhibit 15, Net Operating Earnings adjusted to, show Increase in Operating Expense which would be Experienced by Complainant if Joint Operating Agreement with Affiliated Companies were not in Effect, the date being for the year ended December 31, 1936. (Page 1123.)

26. Complainant's Exhibit 17, Excess or Deficiency of Income of Predecessor Companies Based on Return of Eight Per Cent Applied to Fixed Capital and Working Capital Investment. (Page 1125.)

27. Complainant's Exhibit 18, Summary of Reproduction Cost Estimates of Used and Useful Property as of November 30, 1936, and May 31, 1937. (Page 1130.)

28. Complainant's Exhibit 19, Statement of Net Operating Earnings for Twelve Months ended September 30, 1937, with Reflection of Unrecorded Operating Expense Items. (Page 1163.)

29. Complainant's Exhibit 19a, Detail of Operating Revenues, Expenses and Taxes for year ended September 30, 1937. (Page 1164.)

30. Complainant's Exhibit 19d, Resolution Relating to Discontinuance of Existing System of Allocation of Salaries among Affiliated Corporations. (Page 1172.)

31. Complainant's Exhibit 20, Statement of Effect of Payroll Increases. (Page 1193.)

32. Complainant's Exhibit 21, Statement of Rate Case Expenses to November 15, 1937. (Page 1195.)

33. Complainant's Exhibit 22, Additions to Fixed Capital, December, 1936, to September, 1937. (Page 1196.)

34. Complainant's Exhibit 23, Detail of Operating Expenses for year ended September 30, 1937. (Page 1199.)

{fols. 1516-1517} 35. Stipulation of February 15, 1938, Submitting Matter for Final Decree.

36. Opinion, Davis, C. J., Buffington, C. J. and Dickinson, D. J., Concurring, Granting Permanent Injunction and Making Certain Findings of Fact and Conclusions of Law.

37. Decree Granting Perpetual Injunction with Costs and Concelling Plaintiff's Bond.

38. Petition of Respondents and Intervenors for Appeal and Order of Court Allowing Appeal.

39. Assignment of Errors.

41. Stipulation of Counsel and Amended Praecipe For Transcript of Record.

42. Citation.

43. Clerk's Certificate.

Guy K. Bard, Attorney General. Edward Knuff, Samuel Graff Miller, Herbert B. Cohen, Counsel for Appellants.

Service of the above statement of points to be relied upon by appellants, and of parts of the record necessary for consideration thereof is hereby accepted this 5th day of December, 1938, and it is hereby stipulated that only the parts of the record designated need be printed.

J. Harry LaBrum, Counsel for Edison Light and Power Company.

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[fol. 1518] [File endorsement omitted.]

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Endorsed on cover: File No. 42,994. E. Pennsylvania, D. C. U. S. Term No. 509. Denis J. Driscoll, Thomas C. Buchanan and Richard J. Beamish, et al., appellants, vs. Edison Light and Power Company. Filed December 6, 1938. Term No. 509, O. T., 1938.



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IN THE

# **Supreme Court of the United States**

No. 509

October Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH et al.

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation

*Appellee*

## **Motion of Appellants to Advance Argument**

GUY K. BARD,

*Attorney General*

Commonwealth of Pennsylvania

HERBERT B. COHEN,

Counsel for Utility Consumers League of York, Penna.

SAMUEL GRAFF MILLER,

*Assistant Counsel*

EDWARD KNUFF,

*Counsel*

Pennsylvania Public Utility Commission

North Office Building,  
Harrisburg, Pennsylvania.



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IN THE SUPREME COURT OF THE UNITED STATES

No. 509.

October Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH, et al.

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation

*Appellee*

**MOTION TO ADVANCE**

Guy K. Bard, Attorney General of the Commonwealth of Pennsylvania, and Herbert B. Cohen, Counsel for Utility Consumers League of York, Pennsylvania, Samuel Graff Miller, Assistant Counsel, and Edward Knuff, Counsel for Pennsylvania Public Utility Commission, on behalf of the appellants, move to advance the above entitled cause for hearing on a date prior to January 16, 1939, as may be convenient to the Court.

**STATEMENT OF THE MATTERS INVOLVED**

The Pennsylvania Public Utility Commission (hereinafter referred to as the Commission) on July 27, 1937, issued a report and order pursuant to the provisions of Section 310 of Article III of the Pennsylvania Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated, 1937 Supplement, Title 66, Section 1150) fixing temporary rates to be charged by Edison Light & Power Company (hereinafter referred to as the Company), for its electric service. The order was calculated to produce an annual reduction of \$435,000 in the gross revenues of the Company.

A bill in equity was then filed by the Company in the United States District Court for the Middle District of Pennsylvania attacking the order of the Commission on substantially the following grounds:

1. That Section 310 of the Pennsylvania Public Utility Law violates the Fourteenth Amendment to the Federal Constitution.
2. That the temporary rates prescribed were confiscatory.
3. That the Commission had insufficiently indicated the bases for its temporary rate findings.

The cause was heard before a three-judge Court specially constituted under the provisions of Section 266 of the Judicial Code (U. S. Code Annotated, Title 28, Section 380), and, on October 15, 1937, the Court permanently enjoined the enforcement of the Commission's order of July 27, 1937, on the sole ground that the Commission had insufficiently indicated the bases for its temporary rate findings. The Court held, by a majority thereof, that Section 310 of the



Pennsylvania Public Utility Law was constitutional in its entirety, and all the judges agreed that the imposition of temporary rates was legal if the mode of imposition and the rates themselves were proper. The decision of the Court is reported at **Edison Light & Power Co. v. Driscoll, et al, 21 Federal Supplement 1.**

Thereafter, on November 30, 1937, the Commission rescinded its order of July 27, 1937, and issued an order designed to comply with the expressions of the Middle District Court, which order imposed temporary rates calculated, as previously, to effect a reduction of \$435,000 annually in the gross revenues of the Company. The Company then brought suit in the United States District Court for the Eastern District of Pennsylvania to enjoin this order of the Commission in the proceeding styled "Edison Light and Power Company, a corporation, v. Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald M. Livingston, individually, and constituting the Pennsylvania Public Utility Commission." A specially constituted Court for the Eastern District of Pennsylvania at Philadelphia convoked under Section 266 of the Judicial Code, and composed of Circuit Judges J. Warren Davis and Joseph Buffington, and District Judge Oliver B. Dickinson, issued a preliminary injunction which was made permanent by final decree entered October 14, 1938.

The Company claimed that Section 310 of the Pennsylvania Public Utility Law, pursuant to which the Commission made its order, was unconstitutional, and that the Commission's order resulted in confiscation of the Company's property. The District Court for the Eastern District of Pennsylvania sustained both of these claims.

**REASONS SUPPORTING MOTION TO ADVANCE**

The matters presented here are of great importance, and the public interest is involved therein. An early decision is desirable as a guide to the Commission in many other proceedings now pending before it, and the following specific reasons are urged in support of this motion:

1. That the presently existing conflict of District Court decisions on the constitutionality of the said Section 310 of the Pennsylvania Public Utility Law makes it impossible for the Commission effectively to administer the provisions thereof.

2. Temporary rates already have been imposed by the Commission in nine (9) cases, pursuant to the provisions of Section 310 of the Pennsylvania Public Utility Law. A list of these cases marked "Exhibit A" is attached hereto and made a part hereof.

3. There are one hundred ninety-one (191) cases pending before the Commission in which temporary rates may be imposed, pursuant to the provisions of Section 310 of the Pennsylvania Public Utility Law. A list of these cases, marked "Exhibit B" is attached hereto and made a part hereof.

4. The instant case has been in litigation for a period of approximately three (3) years, and a speedy conclusion is desirable in the public interest.

5. The Attorney General of the Commonwealth of Pennsylvania and Counsel for the Commission who are intimately familiar with the case, retire from office January 17, 1937. Considerable time would be required by their successors for the adequate preparation of the case for presentation, before this Honorable Court, since the record in the case is very voluminous, com-

prising nearly 900 printed pages of testimony, together with numerous statistical exhibits, and the resulting delay would be highly prejudicial to the public interest.

GUY K. BARD,

*Attorney General*  
Commonwealth of Pennsylvania

HERBERT B. COHEN,

Counsel for Utility Consumers League of York, Penna:

SAMUEL GRAFF MILLER,

*Assistant Counsel*

EDWARD KNUFF,

*Counsel*  
Pennsylvania Public Utility Commission

**"EXHIBIT A"****PENNSYLVANIA PUBLIC UTILITY COMMISSION**

List of Public Utilities Upon Which Temporary Rates Have  
Been Imposed as at November 3, 1938

<i>Name of Utility</i>	<i>Number of Customers or Patrons in Penna. at Dec. 31, 1937</i>	<i>Amount of Annual Reduction Ordered</i>
<b>ELECTRIC UTILITIES</b>		
Duquesne Light Company .....	335,735	\$1,250,000
Edison Light & Power Company ..	30,026	435,000
Metropolitan Edison Company .....	116,293	795,900
Pennsylvania Power & Light Co. ...	390,907	2,300,000
Philadelphia Electric Company .....	696,319	3,107,000
Scranton Electric Company, The ...	81,379	560,000
Solar Electric Company .....	1,694	11,300
Total (7 Utilities) .....	1,652,353	8,459,200
<b>WATER UTILITIES</b>		
Beaver Valley Water Company, The	10,192	29,500
Philadelphia Suburban Water Co. ...	79,635	125,000
Total (2 Utilities) .....	89,827	154,500
Grand Total .....	1,742,180	\$8,613,700

**"EXHIBIT B"**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

List of Public Utilities Upon Which the Commission Has  
Instituted Formal Rate Proceedings as at November 3, 1938

*Name of Utility*

*Number of  
Customers  
or Patrons  
in Penna. at  
Dec. 31, 1937*

**ELECTRIC UTILITIES**

Abington Electric Company .....	4,056
Bradford Electric Company .....	11,461
Erie Lighting Company .....	17,699
Glen Rock Electric Light & Power Co. ....	3,491
Harvey's Lake Light Company .....	1,681
Keystone Public Service Company .....	15,836
Northern Pennsylvania Power Co. ....	24,323
Pennsylvania Edison Company .....	64,364
Pennsylvania Electric Company .....	102,728
Renovo Edison Light & Power Co. ....	2,195
West Penn Power Company .....	203,607
Total (11 Utilities) .....	451,441

**MANUFACTURED GAS**

Athens and Sayre Gas Company .....	1,868
Northern Liberties Gas Company .....	478,110
Philadelphia Gas Works .....	
Total (2 Utilities) .....	479,978

**NATURAL GAS**

Columbia Natural Gas Company .....	23,584
Equitable Gas Company .....	181,472
Manufacturers Gas Company .....	5,852
Manufacturers Light & Heat Company .....	112,616

<i>Name of Utility</i>	<i>Number of Customers or Patrons in Penna. at Dec. 31, 1937</i>
Pennsylvania Gas Company .....	37,893
Peoples Natural Gas Company .....	124,304
T. W. Phillips Gas and Oil Co. ....	24,369
United Natural Gas Company .....	53,212
Acme Natural Gas Company	
Allegheny-Butler Gas & Oil Company	
Allegheny Gas Company	
Ambridge Gas Company	
Anderson Natural Gas Company	
Beaver-Butler Gas Company	
Bellewood & Monongahela City Natural Gas Company	
Bessemer Natural Gas Company	
Bole, S. C. Estate	
Brown, H. R.	
Cadogan Gas Company	
Citizens Gas Company	
Citizens Gas & Fuel Company	
Clarion Natural Gas Company	
Conewago Gas Company	
Conquer, S. J.	
Cook, Lora H.	
Crosby Gas Company	
Dewey Trust Estate	
East Brady Gas-Fuel Company	
Eisworth-Hefren Company	
W. H. Emery Estate	
Fairview Gas Company	
Fasenmyer, George R.	
Fidelity Gas Company	
Finessy & Company	
Ford, H. L.	
Fowler, J. D. & Company	
Gettysburg Gas Corporation	
Hanratty Domestic Fuel Supply	



*Name of Utility*

Hazlehurst Gas Company  
Hoch Brothers Natural Gas Company  
James City Gas Company  
Jefferson County Gas Company  
Kane Gas Light & Heating Company  
Kaylor Natural Gas Company  
Kellettville Gas Company  
Laughner Oil & Gas Company  
Lawsonham Oil & Gas Company  
Ludlow Gas & Electric Company  
Marienville Gas Company  
McCullough Gas Company  
McDade Gas Company  
McKean Natural Gas Company  
Mercer Gas Light & Fuel Company  
Milesgrove Gas Company, Ltd.  
Millport Gas Company  
Minard Run Oil Company  
Morris, Jacob  
Mountain Gas Company  
Mt. Jewett Gas Company  
Mt. Morris Gas Company  
New Freeport Natural Gas Company  
Nichols, Dollie & Geo. E. McGill Estate  
Nixon & Company  
North East Heat & Light Company  
Pike County L. & Pr. Company  
Prospect Oil & Gas Company  
Reidsburg Natural Gas Company  
Revere Natural Gas Company  
Rickenbrod, A. A.  
Russell, W. C. & Company

*Name of Utility*

Russellton-Curtisville Gas Utilities	
Saxonburg Heat & Light Company	
Sergeant Gas Company	
Siggins, H. A. Estate	
Slippery Rock Heat & Light Company	
Smith, Walter & Bros.	
State Line Gas Company	
Staughton, S. R.	
St. Nicholas Oil & Gas Company	
St. Petersburg Speechley Oil & Gas Co.	
Susquehanna Gas Company	
Sykesville-DuBois Oil & Gas Company	
Taylorstown Natural Gas Company	
Tidal Gas Company	
Tionesta Gas Company	
Triangle Company of Pennsylvania	
Turner Gas & Oil Company	
Union Heat & Light Company	
Vance, George B. Estate	
Van Guilder, Carl and Vivian	
Victor Gas Company	
Vogt, S. A.	
Warren County Gas Company	
Warrendale Oil & Gas Company	
Waynesburg Home Gas Company	
Westmoreland Gas Company	
Wildwood Gas Company	
Empire Gas & Fuel Company .....	127,089
 Total (98 Utilities) .....	 690,391

*Name of Utility**Number of  
Customers  
or Patrons  
in Penna. at  
Dec. 31, 1937***TELEPHONE**

The Bell Telephone Co. of Penna. ....	1,206,662
Home Telephone Company of Ridgway .....	3,713
Pennsylvania Telephone Coporation .....	55,916
<b>Tótal (3 Utilities) .....</b>	<b>1,266,291</b>

**WATER UTILITIES**

Bakerton Water Company .....	210
Belle Vernon Water Company .....	1,580
Brownsville Water Company .....	2,936
California Water Company .....	999
Chester Water Service Company .....	17,486
Citizens Water Co. of Washington .....	12,081
Clymer Water Service Company .....	2,548
Corry Water Supply Company .....	1,851
Delafield Water Company .....	215
East McKeesport Water Company .....	914
Edgeworth Water Company .....	1,163
Elizabethville Water Company .....	416
Ellwood Consolidated Water Co. ....	3,592
Freeland Water Company .....	2,101
Garrett Water Company .....	216
Johnstown Water Company .....	19,718
Lewistown-Reidsville Water Company .....	7,028
Mt. Jewett Water Company .....	329
Penelec Water Company .....	192
Pennsylvania Water Company .....	24,690
Pittsburgh Suburban Water Service Co. ....	13,967
Portage Township Water Company .....	1,366
St. Marys Water Company .....	1,708
Sayre Water Company .....	3,361

*"Exhibit B"*

<i>Name of Utility</i>	<i>Number of Customers or Patrons in Penna. at Dec. 31, 1937</i>
Scranton-Spring Brook Water Serv. Co. ....	125,072
Sheffield Water Company .....	429
Shenango Valley Water Company .....	11,550
South Pittsburgh Water Company .....	43,759
Sunbury Water Company .....	4,776
Tionesta Water Supply Company .....	276
Whitaker Water Company .....	375
York Suburban Water Company .....	18,420
Total (33 Utilities) .....	325,740

**TRANSPORTATION**

Baltimore and Ohio Railroad Co.  
 Beaver Valley Motor Coach Company  
 Edwards Motor Transit Co., Inc.  
 Harrison-Shields (Trucking)  
 Pennsylvania Greyhound Lines, Inc.  
 Pennsylvania Railroad Company  
 Pennsylvania Truck Lines, Inc.  
 Pittsburgh Motor Coach Company  
 Pittsburgh Railways Company  
 Pittsburgh Transportation Company  
 Reading Company  
 Reading Coach Company  
 Valley Transportation Company  
 Yellow Cab Company of Philadelphia  
 Yellow Cab Company of Pittsburgh  
 Carnahan Transfer & Storage Company  
 Daniels Taxi & Transfer Company  
 Clyde D. Duffee  
 Michael J. Flanigan  
 Girard Transportation Company  
 Hanna Transfer Company  
 Harrisburg Taxi & Baggage Company

*"Exhibit B"*

13

*Name of Utility*

S. A. Heath  
Independent Taxi Service  
S. T. Karns Sons Company  
Lackawanna Taxi Company, Inc.  
Laurel Line Taxicab Company  
B. Frank Miller  
Albert McCutcheon  
H. B. Neff  
Penn Harris Taxi Service Company  
Pennsylvania Transfer  
Public Service Taxi Company  
Rapid Transfer Company  
Reading Transportation Company  
Richmond Bus Company  
J. E. Reimer  
Louis M. Rodgers  
H. E. Sterling  
Tom Ford Taxi Service  
Leonard H. Turner  
Williamsport Trucking Service  
(42 Carriers)

*MISCELLANEOUS*

Aronimink Park Heating Company .....	612
Sunbury Bridge Company .....	526





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U.S. Supreme Court  
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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1935**

**No. 509**

**DENIS J. DEIBCOLE, THOMAS C. BUCHANAN, RICH-  
ARD J. BEAMISH, JOHN SULLIVAN, INDIVIDUALLY  
AND CONSTITUTING THE PUBLIC UTILITY COMMIS-  
SION OF PENNSYLVANIA, AND UTILITY CON-  
SUMERS LEAGUE OF YORK, PA.,**

*Appellants,*

**vs.**

**EDISON LIGHT & POWER COMPANY,**

*Appellees.*

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.**

**STATEMENT AS TO JURISDICTION OF APPEAL.**

**GUY K. BARD,**  
*Attorney General of Pennsylvania;*  
**SAMUEL GRAFF MILLER,**  
**EDWARD KNUFF,**  
**HERBERT B. COHEN,**  
*Counsel for Appellants.*



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### TABLE OF CASES CITED.

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### STATUTES CITED.

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IN THE  
DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

DECEMBER TERM, 1937.

---

**No. 9893**

---

EDISON LIGHT & POWER COMPANY, A CORPORATION,  
*Complainant,*

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICH-  
ARD J. BEAMISH, GUY K. BARD AND DONALD LIV-  
INGSTON, INDIVIDUALLY AND AS CONSTITUTING THE PUB-  
LIC UTILITY COMMISSION OF PENNSYLVANIA,

*Respondents.*

---

**• STATEMENT OF JURISDICTION.**

(Filed November 18, 1938.)

---

Pennsylvania Public Utility Commission and Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Arthur Colegrove and Donald Livingston, as the members of the said commission, and Utility Consumers League of York, Pennsylvania, pursuant to the United States Supreme Court Rule 12, paragraph 1, file this their statement of the basis upon which it is contended that the Supreme Court of the United States has appellate jurisdiction:

A. The appeal herein is from a final decree made and entered by a district court of the United States specially constituted under Section 266 of the Judicial Code, as amended (U. S. Code, Title 28, Section 380), and, as in that section provided, a direct appeal to the Supreme Court of the United States may be taken from the final decree made by such specially constituted district court.

It is further provided by Section 238 of the Judicial Code, as amended (U. S. Code, Title 28, Section 345), that a direct review by the Supreme Court of the United States of a final decree of a district court may be had where such decree is rendered under Section 380 of Title 28 of the United States Code.

B. The State statute involved is the Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated, 1937 Supplement, Title 66, Sections 1101-1562, inclusive). The only section of the State statute involved is Section 310, Article III, printed at 1937 Pamphlet Laws 1068-1070 (Purdon's Pennsylvania Statutes Annotated, 1937 Supplement, Title 66, Section 1150). The said section reads as follows, omitting paragraph (d) which is not pertinent herein:

"Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public utility; pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the



commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinbefore provided.

“(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions: Provided, That the commission, in determining the basis for temporary rates, may make such adjustments in the annual report data as may, in the judgment of the commission, be necessary and proper.

“(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval,

such temporary rates as it has previously fixed, determined, and prescribed.

^(d) . . . . .

“(e) Temporary rates, so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding; unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.”

C. The final decree appealed from was made and entered on the 14th day of October, 1938.

D. The application for appeal was presented on the 18th day of November, 1938.

E. The final decree appealed from permanently enjoined Pennsylvania Public Utility Commission and its members and officers from enforcing an order made by said commission on the 30th day of November, 1937, temporarily fixing the rates which the plaintiff might charge in rendering its public utility electric service. It was alleged in the bill of complaint that said order of the commission would deprive plaintiff of its property and of the use thereof without due

process of law or just compensation in violation of the Fourteenth Amendment of the Constitution of the United States, and that Section 310 of the Public Utility Law, set forth in paragraph B hereof, purporting to authorize the prescription of temporary rates likewise violated the Fourteenth Amendment of the Constitution of the United States. A temporary restraining order was granted by the specially constituted court. After the case was duly submitted, the court made and entered a decree permanently enjoining the enforcement of the order of the Pennsylvania Public Utility Commission. It is from that final decree that this appeal is taken.

F. The following decisions of this Court are believed to sustain jurisdiction of this appeal under Section 238 of the Judicial Code (U. S. Code, Title 28, Section 345):

*West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662;

*Railroad Commission of the State of California v. Pacific Gas and Electric Corporation*, 58 S. Ct. 334;

*Denver Union Stock Yard Co. v. United States*, 58 S. Ct. 990.

Respectfully submitted,

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**EXHIBIT "A".****Opinion.**

This was a suit in equity brought by the Edison Light & Power Company, hereinafter called the company, to restrain the respondents, the Pennsylvania Public Utility Commission, hereinafter called the commission, and the persons composing the commission individually, from enforcing its "temporary rate" order of November 30, 1937, directing the company to file a tariff supplement effecting a reduction of approximately \$435,000 in its annual gross revenue.

It should be stated at the outset that this court is not a rate-making body. The function of fixing the rates of a public utility belongs to the Commonwealth. It has the right to control private corporations, whose business, necessarily monopolistic in character, is affected with a public interest. That control, where the fixing of rates is involved, is exercised through one of its agencies, the Public Utility Commission. In exercising this control, the rights of both the public and the corporation must be considered. The company is entitled to a fair return on a fair value of its property devoted to the public service. The return can not be so high as to exceed the value of the service to the consumer and can not be so low as to confiscate the property devoted to that service. In other words the company is entitled to ask a fair return upon the value of the property which it employs for the public convenience and the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth. Neither is entitled to anything more than these reciprocal rights.

The order in this case was made by the commission pursuant to section 310 (a) of the Public Utility Act of Pennsylvania of May 28, 1937, which provides as follows:

"Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, de-

termine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided."

The company, feeling aggrieved by the order, made application for a statutory court pursuant to the provisions of section 266 of the Judicial Code. An order convening such court was signed on December 14, 1937 and on the same day a preliminary restraining order was entered against the commission upon the entry of a bond by the company for \$75,000. The motion for an interlocutory injunction came on for hearing on January 17, 1938. At the conclusion of the hearing, the restraining order was continued upon the filing of a bond by the complainant for \$150,000. It was agreed between the parties that the matter be treated as an application for a permanent injunction.

The company contends that this section (310(a)) is unconstitutional for the reason that it permits the commission to fix a temporary rate of only 5 per cent. of the original cost, less accrued depreciation of the physical property (when first devoted to public use) of the utility, thus basing the rate upon only one element of the utility's property instead of upon all of its property as the decisions of the Supreme Court require.

The Supreme Court in the leading case of *Smyth v. Ames*, 169 U. S. 466, 547, said the following elements must be considered in finding the fair value of the property of a public utility, devoted to the public use:

"And in order to ascertain that value, the original cost of construction, the amount expended in perma-

nent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

From the time of that decision until the present the Supreme Court in case after case has declared that these elements must be considered by rate-making bodies in fixing a fair return on the fair value of the property of a utility devoted to the public service. *Des Moines Gas Company v. City of Des Moines*, 238 U. S. 153; *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri et al.*, 262 U. S. 276; *St. Louis & O'Fallon Railway Co. et al. v. United States et al.*, 279 U. S. 461; *United Railways v. West*, 280 U. S. 234; *Los Angeles Gas & Electric Corporation v. Railroad Commission*, 289 U. S. 287; *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290; *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U. S. 398; *West v. Chesapeake & Potomac Telephone Co.*, 295 U. S. 662. The law of Pennsylvania is to the same effect. *Bangor Water Co. v. Public Service Commission*, 82 Pa. Superior 48; *City of Erie et al. v. Public Service Commission*, 278 Pa. 512. From the nature of the case, these elements, being property rights, must be considered in finding the present fair value of property. For instance, when we considered the constant increase or decrease in the cost of material and labor, the amount spent in permanent improvements, allowance for overheads, working capital, going concern value (which alone the company says is \$400,000 in this case) the present fair value of property may be very different from the original cost less accrued depreciation. A rate based upon this one element alone as provided in the Act, must, in many, if not all instances, be confiscatory.

The commission seeks to avoid this inevitable conclusion and the constitutional infirmities of the Act by saying that



it does not limit the commission in finding fair value to the consideration of the one element of original cost. It argues that because it "may" not "must", consider the one element only, the constitutionality of the Act is saved. In other words, it contends that the test of the constitutionality of an Act depends upon the *exercise*, and not upon the grant of power. The constitutionality of an Act, it says, depends upon what *is* done, and not upon what *may be*, done under it. If this contention be true, the constitutionality of an act depends upon the will of men and not upon a rule of law. The mere statement of this contention shows its infirmity. *People v. Klinek Packing Co.*, 214 N. Y. 121.

Nor is the constitutionality of the Act saved by the provision in section 310 (c) which provides that:

"If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the differences between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

When this question, in the case of *Edison Light & Power Company v. Driscoll*, 21 Fed. Supp. 1, was considered in the Middle District of Pennsylvania, the court said:

"Does the fact that the rates fixed are only temporary save the order from the inhibition of the constitution? We think it does not, and that this question is answered by the case of *Prendergast v. New York Telephone Company*, 262 U. S. 43, 49, 43 S. Ct. 466, 469, 67 L. Ed. 853, where the court said: 'Nor did the fact that the orders of the Commission merely prescribed temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were final

legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process.'

It has been argued that the recoupment provision of the Pennsylvania act avoids the infirmity in the New York act which the court pointed out in the *Prendergast* case. This argument in effect means that it is proper and legal to violate the Constitution if at some future time that violation may be corrected wholly or in part. In other words, it is perfectly all right and permissible to take one's money by force if by and by it may be partly returned to him. If that is so, how long may the Constitution be violated during which time the injured party is without remedy? May it be for a month, as provided in section 310 (e) of the act (66 P. S. Pa. Sec. 1150 (e)), or for a trial period of six months or a year as provided in section 310 (d) of the act (66 P. S. Pa. Sec. 1150 (d))? Such interpretation of the constitutional requirement is unsound.

Further, the provision for recoupment is not entirely effective. It does not provide for interest of the money, which the company loses during the trial period, while the final rates are being fixed, and if it did so require, considerable portions of the principal lost, might never be recovered. The act provided that if the final rates are higher than the temporary rates, 'then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined' (section 310 (e) of the act, 66 P. S. Pa. sec. 1150 (e)) the sum lost on account of the temporary rates. But if the consumer discontinues the service or move out of the territory, as doubtless in a shifting population will be frequently done, the utility in many cases will be absolutely without remedy for sec-

tion 305 of the act (66 P. S. Pa. Sec. 1145) abolishes 'deposits to secure future payments'."

What was said there is applicable here and the provision in subsection 310 (e) does not save the constitutionality of this section.

We think that section 310 (a) of the Act is unconstitutional and what was done pursuant to it is invalid.

If, however, we are in error about this and the section is constitutional, we think that the order is invalid for the reason that it is confiscatory.

The final report of the commission and the briefs of the parties contain many analyses and a mass of figures which it is difficult for one not a certified public account or technical engineer to understand. Some of the figures may be unimportant, but others are important. The commission found that the rate base or fair value of the company's property for the purpose of prescribing temporary rates in \$5,250,000. Another important fact is that the operating revenue received by the company for the year ended September 30, 1937, was \$2,202,329. In order to determine the net profit, the expenses incurred in operation, the taxes as adjusted and the amount the commission ordered to be deducted from the revenue must be subtracted from this sum. According to the commission these items aggregate \$1,817,829, which subtracted from \$2,202,329 leaves a net profit of \$384,500. But the company contends that in addition to the items allowed by the commission, the following allowances should be made: \$178,375, rate case expenses; \$20,593 increased salary expenses to officers and employees as provided by its board of directors; \$15,089 realized by the company on sale of electric energy to York Railways Company which was included in the operating revenue. According to the contention of the company, therefore, the expenses etc. which should have been allowed amount to \$2,010,680, which subtracted from the income leaves a net profit of \$191,649. Should these additional expenses be allowed?

As to the rate case expense of \$178,375, the suit was started by the commission which required the company to

produce much of the evidence necessitating the expense for which allowance is sought. There is no contention that the expense was unreasonable or in any manner inflated. The commission disallowed this expense on the ground, in part, at least, that the company in the past received excessive rates, but this position is untenable, *Board of Public Utility Commission v. New York Telephone Co.*, 271 U. S. 23, 31, and on the further ground that part of the expense was incurred under the Public Service Company law which was superseded by the Public Utility Act, effective June 1, 1937. The former law included no provision for assessment of the costs of investigation or general regulatory expenses against public utilities. The evidence produced under the predecessor of the Pennsylvania Public Utility Commission was used by the latter. In any event the company did not ask the allowance of the expense on the ground that the commission has the right to assess the costs, but on the ground that it was a reasonable expense honestly and necessarily incurred, actually paid and, therefore, ought to be allowed in fixing a fair return. It is the policy of the courts to allow rate case expenses if the complaint of the utility is not unfounded and if the cost of the proceedings have not been swollen by untenable objections. In determining what the rate of return on the property of a utility shall be, "the commission must give heed to all legitimate expenses that will be charges upon income during the term of regulation, and in such a reckoning the expenses of the controversy engendered by the ordinance must have a place like any others". In speaking of the allowance of expenses of the rate litigation, the Supreme Court further said: "We think they must be included among the costs of operation in the computation of a fair return". *West Ohio Gas Co. v. Public Utilities Commission*, 294 U. S. 63, 73, 74.

Increased salary expenses required to be paid by the company to its officers and employees pursuant to a resolution by its board of directors, if reasonable, should be allowed. The evidence does not show these increases to be unreasonable or exorbitant. A commission may regulate but not manage a utility. It "is not empowered to substitute its judgment for that of the directors of the corporation".

Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276, 289.

We think that the loss of \$20,593 included in the revenue to the company on the sale of energy to the York Railway Company at and upon the abandonment of that company should have been allowed by the commission. As we understand it the abandonment is certain and is not denied.

The other item in dispute grows out of the adjustment of taxes because of the reduction in revenue of \$435,000 ordered by the commission. The original amount of taxes paid by the company was \$333,649, and the commission allowed a reduction of \$127,249 leaving a balance of \$206,400 to be paid by the company. The company, on the other hand, says that \$148,455 should have been allowed, leaving a balance of \$185,194 to be paid. It is not clear just how this difference of \$21,206 between them arose, but it does not have a decisive bearing on the case, for the reason that if the contention of the company is correct, it decreases the expense, increases the profit and the rate of return.

If these allowances are made, as we think they should be, the return, as above stated, on the fair value of \$5,250,000 found by the commission is 3.65%. If \$5,866,081 is taken as the rate base, the return allowed is 3.27%. Either, under the facts of this case, is confiscatory.

The commission, however, says that if the rate case expense is allowed and amortized over a period of five years, the profit of operation would be greater and the return would not be confiscatory. But however that might be, it was not allowed in any form, for a single year or amortized, and we must pronounce upon the order as made.

It follows that the company is entitled to a permanent injunction restraining the commission from enforcing the temporary rates prescribed in accordance with the prayer of the bill.





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**In the Supreme Court of the United States**

OCTOBER TERM, 1938

No. 509

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J.  
BEAMISH and JOHN SULLIVAN, Individually  
and Constituting PENNSYLVANIA PUBLIC  
UTILITY COMMISSION; and UTILITY CON-  
SUMERS LEAGUE OF YORK, PA.,

*Appellants,*

*v.*

EDISON LIGHT & POWER COMPANY,

*Appellee.*

Appeal From the District Court of the United States  
for the Eastern District of Pennsylvania

**BRIEF OF PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1938**

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**No. 509**

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Appeal From the District Court of the United States  
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**BRIEF OF PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

**OPINIONS BELOW**

The order of Pennsylvania Public Utility Commission is reported in 17 Pennsylvania Public Utility Commission Reports 380, and in 21 Public Utility Reporter (New Series) 328. The opinion of the District Court for the Eastern District of Pennsylvania is reported in 25 Federal Supplement 192.

## CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Article XIV, Section 1, of the Amendments to the Federal Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 310 of the Pennsylvania Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated, 1938 Supplement, Title 66, Section 1150) provides (omitting paragraph (d) which is not here in issue):

"Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful

in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

“(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions: Provided, That the commission, in determining the basis for temporary rates, may make such adjustments in the annual report data

*Constitutional Provision and Statute  
Involved*

as may, in the judgment of the commission, be necessary and proper.

"(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

"(d) \* \* \*

"(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

## STATEMENT OF THE CASE

Pennsylvania Public Utility Commission, one of the appellants, is the Commission of the Commonwealth of Pennsylvania duly authorized to exercise regulatory jurisdiction generally over public utilities. Appellee is Edison Light & Power Company, a public utility engaged solely in intrastate commerce, and rendering electric service to approximately 30,000 customers in the City of York and contiguous territory. Appellee has no funded debt, and all of its capital stock is owned by York Railways Company and is pledged as security for the funded debt of York Railways Company. The common stock of York Railways Company is wholly owned by NYPANJ, a holding company in the Associated Gas & Electric Company system.

On the 27th day of January, 1936, a Commission inquiry and investigation was instituted to determine the reasonableness of the rates of Edison Light & Power Company under the provisions of the then substantive regulatory law of the Commonwealth of Pennsylvania, Act of July 26, 1913, P. L. 1374. (Purdon's Pennsylvania Statutes Annotated, Title 66, Section 1, et seq.) Several hearings were held, at which testimony was presented. During the progress of this case, the utility law of the Commonwealth of Pennsylvania was recodified, the Act of 1913, P. L. 1374, was repealed and, in lieu thereof, the Legislature enacted the Public Utility Law, Act of May 28, 1937, P. L. 1053. (Purdon's Pennsylvania Statutes Annotated, 1938 Supplement, Title 66, Section 1101 et seq.)

Section 310 of the new Public Utility Law authorizes the Commission, during the pendency of a rate case, to prescribe temporary rates, the effect of which rates must be considered by the Commission in prescribing final rates at the termination of the general rate proceeding. On July 27, 1937, after notice of its intention to prescribe temporary rates, and after argument before it, the Commission issued a temporary rate order against Edison Light & Power Company. The order directed the company to revise its tariff to effect a reduction of its gross annual revenues in the sum of \$435,000.

A bill in equity was filed by the company in the United States District Court for the Middle District of Pennsylvania. A temporary restraining order was issued by the Court. The cause was heard before a three-judge Court, as provided by Section 266 of the Judicial Code. Following the taking of testimony and argument, the Court, on October 15, 1937, permanently enjoined the order of the Commission. Each of the Judges who constituted the special Court wrote an opinion in the matter. Two of the judges, Judge Johnson and Judge Watson, held that the temporary rate provisions of the Public Utility Law did not offend constitutional limitations, but that the order of the Commission failed to indicate the bases or the findings upon which the Commission prescribed its rate reductions. The opinion of Judge Davis agreed that the Commission had insufficiently indicated the bases of its order, but further held that the temporary rate provisions, authorizing the fixing of rates based upon



the original cost of the property of the company, were unconstitutional since they failed to take cognizance of the standards prescribed by the Court in the case of *Smyth v. Ames*, 169 U. S. 466, and cases following that decision. The opinions aforesaid are reported in *Edison Light & Power Co. v. Driscoll*, 21 F. Supp. 1.

Following the decision of the Middle District Court, the Commission on November 30, 1937, issued a supplemental temporary rate order in which it reviewed the record, and set forth at length the bases for its findings. The company was again ordered to revise its tariffs to effect a reduction in the annual gross operating revenues in the sum of \$435,000. The Commission order gave consideration to the reproduction cost evidence, to the original cost evidence, and to the other matters of record. The order referred to the fact that it involved merely temporary rates, and reserved doubtful points for consideration in a final order.

The Commission found that, for the purpose of fixing temporary rates, the value of the company property was \$5,250,000. The order of the Commission indicates that it accepted almost entirely the operating expenses claimed by and experienced by the company, and allowed them for temporary rate purposes. The annual allowances for operating expenses, depreciation, and return of 6 per cent upon the aforestated value of \$5,250,000 totaled \$1,697,829. The actual experience of the company showed annual gross operating revenues of \$2,202,329 for the 12-month period ending September 30, 1937, an excess of \$504,500

over the revenues found allowable. The Commission, however, prescribed temporary rates to effect a reduction of only \$435,000.

The company then filed a bill to enjoin the order of the Commission of November 30, 1937, aforesaid, in the United States District Court for the Eastern District of Pennsylvania. A three-judge Court was again constituted, under the provisions of Section 266 of the Judicial Code. A temporary injunction was issued. Testimony was taken and argument had before this three-judge Court for the Eastern District on January 17, 1938, and, on October 14, 1938, the preliminary injunction was made permanent. The opinion of the Court (25 F. Supp. 192) was written by Judge Davis, who, following the opinion he had rendered sitting in the Middle District, held that Section 310(a) of the Public Utility Law offended constitutional restrictions in that it failed to direct the Commission to consider the elements of fair value prescribed in *Smyth v. Ames*, and cases following that decision, and that the temporary rates would result in confiscation of the company property. It is from this order that this appeal has been taken.

## **SPECIFICATION OF ERRORS TO BE URGED**

The United States District Court for the Eastern District of Pennsylvania erred:

1. In holding that Section 310 of the Pennsylvania Public Utility Law is unconstitutional as contravening the Fourteenth Amendment.
2. In holding that the findings and conclusions of the Pennsylvania Public Utility Commission Order of November 30, 1937, are not supported by substantial record evidence.
3. In holding that Pennsylvania Public Utility Commission, in computing temporary rates, improperly disallowed certain operating expenses claimed by appellee.
4. In holding that the temporary rates fixed by Pennsylvania Public Utility Commission were confiscatory.
5. In failing to dismiss the bill of complaint for want of equity, and in failing to dissolve the temporary restraining order theretofore entered.
6. In entering its final decree of October 14, 1938, permanently enjoining enforcement of the temporary rates prescribed by Pennsylvania Public Utility Commission on November 30, 1937, cancelling appellee's injunction bond and imposing all costs on Pennsylvania Public Utility Commission and its members.

**SUMMARY OF ARGUMENT****I.**

Temporary rates are desirable for effective rate regulation. Under such rates, consumers have the prompt benefit of reduced rates when warranted by the facts, and the Commission is provided with valuable experience data for use in determining proper final rates.

**II.**

Section 310 of the Pennsylvania Public Utility Law is constitutional. It provides an adequate method for recoupment of loss, if any, while temporary rates are in effect, and thereby prevents confiscation. Furthermore, the provisions of this section do not restrict the Commission as to the elements of value it may consider, and authorize the prescription of just and reasonable temporary rates consistent with constitutional standards.

**III.**

Rates that afford to a public utility a fair return upon the prudent original cost of its property used or useful in public service are not confiscatory. The reproduction cost doctrine hinders effective regulation. It is unsound from the engineering and accounting standpoints. The temporary rates here involved permit more than a compensable return on prudent original cost, and, therefore, do not violate the Federal Constitution.

IV.

The Commission findings as to rate base, operating expenses, depreciation, and rate of return, are reasonable and proper and supported by substantial evidence. As clearly appears from the Commission order and the record, the Commission received and considered in detail, evidence presented on behalf of the Commission and the utility on reproduction cost, original and book cost, working capital, going concern value, depreciation, operating expenses and rate of return. If reproduction cost must be considered on the issue of confiscation, the record in this case contains sufficient evidence, and the Commission order shows sufficient consideration thereof, to sustain the rates prescribed by the Commission.

V.

Upon all of the facts and the law, the injunction restraining the enforcement of the temporary rate order of the Commission should be dissolved.

**ARGUMENT****I.****TEMPORARY RATES ARE DESIRABLE  
FOR EFFECTIVE RATE REGULATION****A.****Temporary Rates are Advantageous to the Consumers.**

The power and duty to determine the reasonableness of rates charged by Pennsylvania public utilities has been vested in the Pennsylvania Public Utility Commission by the provisions of the Pennsylvania Public Utility Law.

The Pennsylvania Act, at Section 309, (Purdon's Pennsylvania Statutes Annotated, 1938 Supplement, Title 66, Section 1149), provides:

"Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates (including maximum or minimum rates) to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this act. \* \* \*"

It is under the provisions of this section that the Commission is proceeding to determine the reasonableness of the rates of appellee. Before completion



of the process it became apparent from the record that, if the Commission were to restrict the company to a return of 6 per cent on its own fair value figure, its gross operating revenues were admittedly excessive. (R.804,805). This admitted excess, plus the elimination of obviously improper items from the rate base and from operating expenses, indicated to the Commission that an immediate reduction in gross operating revenues of at least \$435,000 should be ordered.

Clearly, it is desirable for any regulatory Commission, under these circumstances, to have the power to prescribe reasonable temporary rates, pending further consideration of matters in substantial dispute.

Prior to the enactment of the Pennsylvania Public Utility Law, consumers were forced to pay excessive rates during the entire pendency of the rate proceeding, and until the time final reduced rates were prescribed by the Commission. Because of the lack of specific statutory power to fix reasonable temporary rates during the progress of the rate proceeding, the utilities, in many instances, have availed themselves of every conceivable pretext for delay.<sup>1</sup>

Rate proceedings against both small and large utilities have required extensive hearings, often spread over a period of years, sometimes as great as ten years. Such rate proceedings result in records monu-

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<sup>1</sup> *McCart v. Indianapolis Water Co.*, 302 U. S. 419, dissenting opinion Mr. Justice Black, p. 435; *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, concurring opinion Mr. Justice Brandeis, pp. 88-93; *Scranton-Spring Brook Water Service Co. v. P. S. C.*, 119 Pa. Superior Ct. 117; *Pennsylvania Power & Light Co. v. P. S. C.*, 128 Pa. Superior Ct. 195.

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mental in size. Many of the problems raised by these proceedings have been intricate and involved; and much of the evidence produced has been conflicting opinion testimony varying in worth and presenting a maze of detail and figures: *City of Louisville v. Cumberland Tel. & Tel. Co.*, 225 U. S. 430. Yet, with this involved and uncertain evidence, there is frequently evidence that is definite, certain, and uncontradicted, upon which a rate reduction could be based, pending final consideration of the controversial issues. The inability of a regulatory commission to effect immediate rate reductions in cases in which such reductions were clearly warranted called for a remedy, and so it was that Section 310 of the Pennsylvania Public Utility Law was enacted to provide this remedy.

## B.

### **Temporary Rates Provide Valuable Experience Data For Use in Determination of Proper Final Rates.**

This Court has plainly indicated that whenever actual experience is available, it will be given first place in determining the reasonableness of rates.<sup>2</sup>

Under the provisions of Section 310 of the Public Utility Law, providing for reasonable temporary rates

<sup>2</sup> *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, (No. 2), 294 U. S. 79; *Knoxville v. Knoxville Water Co.*, 212 U. S. 1; *Willcox v. Consolidated Gas*, 212 U. S. 19; *Northern Pacific Railway v. North Dakota*, 216 U. S. 579; *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655; *City of Louisville v. Cumberland Tel. & Tel. Co.*, 225 U. S. 430, 436; *Brush Electric Co. v. Galveston*, 262 U. S. 443; *Lindheimer v. Illinois Bell Tel. Co.*, 292 U. S. 151.

during the progress of the rate proceeding, the experience factor is made available to the Pennsylvania Commission before the determination of final rates. This section provides a device whereby the relationship of lower rates and increased use may be tested by experience while the interests of the investors are safeguarded against loss during the experimental temporary period.

The practical advisability, from the standpoint of both consumers and company, of providing experience data for use in predicting the results of final rates finds demonstration in the present record through the actual experience of appellee in connection with rate reductions.

Effective September 1, 1933, a reduction of retail and wholesale power rates was made, which appellee calculated would reduce its annual revenues in the amount of \$32,300. (R. 147) Instead of a reduction, the 1934 revenues showed an increase over the 1933 revenues in the amount of \$69,197. (R. 148). Effective February 7, 1935, a reduction of residential and commercial rates was made which appellee calculated would reduce its annual revenues in the amount of \$130,700. (R. 147). Instead of a reduction, the 1935 revenues showed an increase of \$6,092 over the 1934 revenues. (R. 149). Effective September 1, 1935, the high-tension power interchange rates were reduced, and appellee calculated its annual revenues would be reduced in the amount of \$15,000. (R. 147). Instead of a reduction, the revenues for the first six (6) months of 1936 showed an increase of \$36,259 over the revenues for the same period in 1935. (R. 149).

We submit that the primary object of Section 310 is to facilitate prompt action, by enabling the Commission, where the public interest so requires, to establish reasonable experimental rates during the progress of a rate proceeding. As a result of this change in procedure, the consumer may have the prompt benefit of reduced rates, or the utility the prompt benefit of increased rates, when warranted by the facts, the interests of investors are safeguarded against loss, the public utility companies will have an incentive to do everything in their power to aid in the prompt and expeditious determination of the rate proceeding; and the Commission will have a survey of actual experience under the temporary rates to guide its determination of final rates.

## II.

### SECTION 310 OF THE PENNSYLVANIA PUBLIC UTILITY LAW IS CONSTITUTIONAL

#### A.

#### Judicial Consideration of Temporary Rates.

A temporary rate order issued pending the termination of rate proceedings has been upheld by this Court. In *The New England Divisions Case*, 261 U. S. 184, a temporary rate order was issued by the Interstate Commerce Commission prescribing a division of joint rates among numerous railroads, and increasing the division or share which the New England roads would receive. The order was made before complete analysis of all available evidence, was to

continue in force until further order of the Commission, and was left open for correction upon application of any railroad. The Commission did not consider **each division, each road, and each rate separately**, since the need for a decision was urgent and the roads numerous, and it appeared that the delay involved in making a detailed analysis would result in prejudice to the New England roads. This Court, in sustaining the provisional action of the Commission, stated (page 201):

"A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation, some changes in it will have to be made. To grant under such circumstances immediate relief, subject to later readjustments, was no more a transfer of revenues pending a decision, than was the like action, in cases involving general increases in rates, a transfer of revenues from the pockets of the shippers to the treasury of the carriers. **That the order is not obnoxious to the due process clause, because provisional, is clear. If this were not so, most temporary injunctions would violate the Constitution.**" (Emphasis supplied).

The fact that a rate order is to remain in effect only for a temporary period will not prevent a utility, in the absence of a statutory recoupment provision, from seeking the aid of equity, if confiscation can be shown. In the case of **Prendergast v. New York Telephone Co.**, 262 U. S. 43, the New York Commission had ordered a reduction of the rates of the New York Telephone



Company during the pendency of a rate case against the company. The statute under which this order was issued made no provision for repayment of loss which might result from such temporary rates. The company, complaining that the reduced rates were confiscatory, sought an injunction in a Statutory Federal Court. The temporary injunction sought for was issued and, upon appeal to this Court, the action of the Statutory Court was upheld. In the course of its opinion, the Court said (pp. 49, 51) :

"Nor did the fact that the orders of the Commission merely prescribe temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process.

\* \* \* \* \*

"Here the Commission had prescribed temporary rates which were found to be confiscatory, which were to continue in effect pending the final determination of the Commission after its investigation had been completed; and no date had been fixed for the completion of this investigation or the final hearing. The Company meanwhile could only be protected from loss by injunction; while,

on the other hand, its subscribers were protected by the bond which was required for the return of the excess charges collected if the injunction should be thereafter dissolved. \* \* \*

Any rate order, be it temporary or final, which provides for an inadequate return, in the absence of statutory recoupment provisions, will confiscate the utility's property since a utility cannot recover past losses by future rates. See **Galveston Electric Co. v. Galveston**, 258 U. S. 388. But we are convinced that the **Prendergast** case plainly implies that, had proper statutory provision been made to reimburse the utility for possible loss resulting from temporary rates, the utility could not have supported a claim of confiscation.

To meet the criticism of the **Prendergast** case, the New York Legislature amended its Public Service Law to include the following provisions (New York Public Service Law, Section 114, L. 1934 Chap. 287), which are quoted at length to demonstrate their similarity to the provisions in issue in the case at bar:

“Sec. 114. **Temporary rates.** To facilitate prompt action by the commission in proceedings involving the reasonableness of the rates of any public utility and to avoid delay in any such rate proceeding, the commission is hereby authorized to require any public utility company to establish, provide and maintain continuing property records, including a list or inventory of all of the physical property actually used in the public service, and to require any public utility company to keep its books, accounts and records in such manner as to show currently the original cost of said physical property and the reserves accumulated to provide

for the retirement or replacement of said physical property.

"The commission may, in any such proceeding, brought either on its own motion or upon complaint, upon notice and after hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by said utility company pending the final determination of said rate proceeding. Said temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property of said public utility company used and useful in the public service, and if the duly verified reports of said utility company to the commission do not show the original cost, less accrued depreciation, of said property, the commission may estimate said cost less depreciation and fix, determine and prescribe rates as hereinbefore provided.

"Temporary rates so fixed, determined and prescribed under this section shall be effective until the rates to be charged, received and collected by said utility company shall finally have been fixed, determined and prescribed. The commission is hereby authorized in any proceeding in which temporary rates are fixed, determined and prescribed under this section, to consider the effect of such rates in fixing, determining and prescribing rates to be thereafter charged and collected by said public utility company on final determination of the rate proceeding."

The New York Court of Appeals held, in **Bronx Gas & Electric Co. v. Maltbie**, 271 N. Y. 364, 3 N. E. (2d) 512, that the quoted provisions satisfied the deficiencies

mentioned in the Prendergast case, and declared that the imposition of temporary rates thereunder constituted only a step in the legislative process, which step was not final in character, and could not possibly result in confiscation, since any losses arising therefrom must be made up to the utility in the rates finally prescribed. The net effect of this holding is that temporary rates are not subject to judicial review on the question of confiscation during the temporary period they remain in effect, where the law under which they are prescribed provides for recoupment. We respectfully urge the Court to enunciate this principle as the law of the case at bar.

### B.

#### Section 310 Provides An Adequate Method for Recoupment of Loss, If Any, While Temporary Rates Are In Effect, and Thereby Prevents Confiscation.

It is realized that the courts have, from time immemorial, been the guardians of the rights and property of the citizens against confiscation. It is also realized that the effect of our contentions is to defer the exercise of that guardianship with reference to substantive—as distinct from procedural—issues, pending final legislative rate action by the Commission. To justify such postponement, we recognize that the property owner must be afforded reasonable protection, in that there must be no possibility that the public service of the utility will be impaired by reason of insufficient funds, pending final determination of reasonable rates, and, in addition, the loss suffered by reason of temporary rates which are later found to be too low, must be restored.

Section 310(a) and Section 310(e) of the Pennsylvania Public Utility Law clearly and indubitably furnish the protection we recognize as necessary.

Section 310(a) provides that the temporary rates prescribed thereunder shall yield a return of not less than 5 per cent on the original cost less depreciation of the used and useful utility property. To fulfill this absolute requirement, it is first necessary for the Commission to ascertain the original cost of the property and to determine proper depreciation. As pointed out by the New York Court in the Bronx Case (3 N. E. (2d) 512, 515), "there is some accuracy in these figures; they can be fixed with some certainty and are not dependent altogether upon speculative expert opinion."

After the Commission has properly determined the rate base in accordance with the requirements of the law, it must allow the utility all reasonable and proper operating expenses. Then, and only then, can it compare the allowable revenues with the actual revenues, to determine whether or not a temporary rate reduction is possible. Thus, all of the ordinary running expenses of the utility must be allowed, and any reduction must come from revenues over and above such ordinary expenses.

But, the Commission must go farther. It must allow a return to the investor, at a rate not less than 5 per cent on the original cost less depreciation of the utility property. Thus, under Section 310(a) of the

Public Utility Law, some return on investment must always be provided.

It is to be presumed that all regulatory bodies will perform their functions with reasonable dispatch and, where this presumption proves false, the remedies of injunction and mandamus are available. The Court has held, in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 551, that:

"It is a familiar rule that a court may exercise its equity powers, or equivalent mandamus powers, *United States ex rel. Greathouse v. Dern*, 289 U. S. 352, 359, to compel courts, boards, or officers to act in a matter with respect to which they may have jurisdiction or authority, although the court will not assume to control or guide the exercise of their authority. *Interstate Commerce Comm'n. v. Humboldt S. S. Co.*, 224 U. S. 474; *Louisville Cement Co. v. Interstate Commerce Comm'n.*, 246 U. S. 638; see *Work v. United States ex rel. Rives*, 267 U. S. 175, 184; *Wilbur v. United States ex rel. Kadrie*, 281 U. S. 206, 218."

It is also to be presumed that regulatory bodies will act fairly and reasonably in all other respects. But, where arbitrary or unfair Commission action is shown to violate fair play, the Courts need not hold the prescribed rates to be confiscatory in order to justify intervention to protect the company: *West v. Chesapeake & Potomac Telephone Co.*, 295 U. S. 662.

However, as stated, it is recognized that if the return permitted by the temporary rate order is ultimately determined to be too low, the investor has been deprived of income to which he is entitled, and the Pennsylvania Legislature has provided in Section



310(e) that the investor shall have restored to him the amount of any such loss.

The Court below was of opinion that the recoupment provision of Section 310(e) is not entirely effective because it does not provide for interest on the money which the company may lose during the trial period, and because the company, in view of Section 305 of the Public Utility Law, abolishing deposits to secure future payments of rates, is without remedy against consumers who may discontinue service or move out of the territory. These objections of the Court below are groundless.

The first objection is invalid, because a statute authorizing the taking of property is not unconstitutional merely because of failure expressly to provide for payment of interest during the interim between the taking and payment of compensation, since the right to interest is necessarily implied: **United States v. Rogers**, 255 U. S. 163; **Brooks-Scanlon Corp. v. United States**, 265 U. S. 106; **Simms v. Dillon**, 193 S. E. 331.

As to the second objection, the abolition of deposits to secure payment of future rates has nothing to do with the effectiveness of the company's recoupment. It is not the deposits of those who have discontinued service from which the statute requires recoupment, but from rates paid by those who are continuing to be served by the company. Consequently, this objection of the Court below is wholly immaterial to the issue.

The main attack on the sufficiency of the recoupment provision made by appellee in the Court below was based on the proposition that no real guarantee is made for the payment of recoupment. Appellee contended that, since neither the credit of the Commonwealth of Pennsylvania is pledged for its payment, nor is any specific fund or body of consumers liable therefor, the recoupment provided is illusory. We submit that these considerations do not show the recoupment provision to be ineffective in any way.

Common experience proves that public demand for utility service is not substantially influenced by minor fluctuations in rates. It cannot be successfully argued that the slight increase in final rates which might be necessary to reimburse a utility for the loss sustained during a brief period under temporary rates would detrimentally affect either the number of a utility's consumers or the amount of their consumption.

In addition to being able to look to a stable and permanent body of the public for recoupment, the utility possesses an exceptional, salutary and effective method for the enforcement of payment of recoupment. The right of the utility to discontinue service for non-payment of the recoupment rate found reasonable by the Commission will, in all but a very small percentage of instances, result in the consumer making prompt payment of the recoupment rate as an alternative to losing the virtually indispensable service of the utility. We submit that this ability to look to a body of the public from which it can readily exact recoupment fully protects the utility.

Certainly, any fear that appellee would not be able to recoup the difference between revenues obtained under temporary rates and those permitted by final rates, is wholly illusory. It is inconceivable that a company which had admittedly been collecting \$250,000 annually in excess of reasonable revenues (R.777) will find itself unable to collect a sum in recoupment of temporary losses.

The contention raised in the Court below that the Commission would have no right as a matter of law to require recoupment from a new consumer is without merit. The Court below did not accept this contention, and it is fully answered by the words of the New York Court in the Bronx Case, (3 N. E. (2d) 512, 516) where the Court said:

“ \* \* \* A few consumers may be new customers paying what the old consumer should have paid. Such instances are of minor importance; the percentage must be very small. We can never work our institutions of government if we refine matters to such an extent that we have to consider all these little details. The Constitution expresses fundamental principles, and if in the main these have been observed, this is all that can be required. Besides, when we speak of the consumer—the customer—we mean the public, not individuals. See *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 23 S. Ct. 571, 47 L. Ed. 892.”

See also opinion of Judge Johnson, *Edison Light & Power Co. v. Driscoll*, 21 F. Supp. 1, 4.

The argument in this regard is made, not on behalf of the ratepayers, who might be required to bear the

increase, but on behalf of the utility. The utility cannot reasonably be heard to complain that its recoupment may burden the wrong people.

Appellee also advanced the contentions that Section 310(e) is deficient because it does not provide for possible credit impairment and loss of interest, resulting from inadequate temporary rates, nor for the time and rate of recoupment. We submit that Section 310(e), by requiring the Commission to allow recoupment, has entrusted these matters without specific mention of them to the sound administrative discretion of the Commission. In advance of any abuse by the Commission of the command of the Legislature to consider the effect of temporary rates in fixing final rates, this Court will not pronounce anticipatory judgment as to whether or not the Commission will allow proper recoupment. See **National Fertilizer Ass'n. v. Bradley**, 301 U. S. 178; **Continental Baking Co. v. Woodring**, 286 U. S. 352; **United States v. Illinois Central Railroad Co.** 291 U. S. 457.

The taking of property before determination of the amount of compensation to which the owner is entitled, does not violate the Fourteenth Amendment: **Dohany v. Rogers**, 281 U. S. 362. So long as sufficient security is made available for reasonably prompt payment of compensation, and there is adequate provision for recourse to the security, the requirement of just compensation is met, and confiscation does not result: **Joslin Manufacturing Co. v. Providence**, 262 U. S. 668; **Bragg v. Weaver**, 251 U. S. 57; **Crozier v. Krupp**, 224 U. S. 290.

Although the cases deciding these principles relate to eminent domain statutes, the principles can be applied with equal, if not greater, force to a temporary rate statute. If an individual, when his property is taken by the state in the public interest, cannot claim confiscation if just compensation is provided, we can conceive no greater right in a utility, whose property is regulated by the state in the public interest, to be permitted to claim confiscation when such regulation inadvertently results in a taking for which just compensation is provided. In the taking of property by eminent domain, the private interest of the land owner is subordinated to purposes of public improvement. We represent that, similarly, the private advantage of the utility investor should be subordinated to the interest of the public in effective rate regulation.

In view of these principles, and the above demonstration that Section 310(e) fully and adequately provides for just compensation if any property of the utility is taken by virtue of inadequate temporary rates, the conclusion is inevitable that such taking cannot be considered confiscatory, and does not violate the Fourteenth Amendment. It is, therefore, respectfully submitted that the temporary rates in the instant case should not have been enjoined on the ground that they resulted in confiscation, and that the action of the Court below, in basing its decree partly upon a finding of confiscation, constitutes reversible error.

C

**Section 310 Does Not Restrict the Commission as to  
Elements of Value It May Consider in  
Prescribing Temporary Rates, and Au-  
thorizes the Prescription of Just and  
Reasonable Rates.**

We have contended that rates prescribed under Section 310, due to their temporary character and the fact that just compensation is provided for any possible loss occasioned thereby, are not subject to judicial review on the issue of confiscation. Independently of this contention, however, and even supposing the contention to be invalid, we submit that Section 310(a) clearly provides for the prescription of non-confiscatory rates, and does not, in any manner, violate the Fourteenth Amendment to the Constitution of the United States.

The New York Court, in the Bronx case, proceeded on the theory that the New York temporary rate provision, earlier quoted, furnishes a mechanical formula for the imposition of temporary rates, and indicates, in the course of its opinion, that the Commission must, in all cases, determine temporary rates on the sole basis of original cost less depreciation. The Court below took a similar view of the provisions of Section 310(a) of the Pennsylvania Law and construed them as limiting the Commission, in the prescription of temporary rates, to the consideration of only one element of value; namely, original cost, to the exclusion of all other value criteria. For



this reason, the Court declared Section 310(a) unconstitutional.

We contend that no language in Section 310(a) warrants or justifies the construction of the Court below, and that such construction is contrary to the clearly expressed intent of the Legislature.

It is earnestly submitted that Section 310(a) does not in any manner whatsoever restrict the Commission as to the elements of value which it may consider in prescribing temporary rates. The only restriction contained in Section 310(a) is that temporary rates in all cases must be "sufficient to provide a return of not less than five per centum upon original cost less accrued depreciation of the physical property of the utility." The words "not less" obviously connote a minimum limitation and not an exclusive standard, and the Commission may employ whatever method of arriving at rate base and whatever rate of return is proper under the circumstances so long as the return provided by the temporary rates is not less than 5 per cent of original cost less depreciation.

The fact that the Commission, in complying with this restriction, is bound to consider the original cost of a utility property, in no way sustains the conclusion that consideration of any other value element is not authorized. If reproduction cost, or any other value element, must be considered, and a rate of return in excess of 5 per cent must be allowed, certainly Section 310(a) does not preclude the Commission from such consideration or allowance.

Appellants further submit that Section 310(a) of the Public Utility Law not only does not impair a public utility's constitutional safeguard against confiscation, but also provides an additional safeguard to utilities in the field of non-confiscatory regulation by restricting the Commission in the manner above stated. It is possible, within the provisions of the Constitution, as interpreted by this Court, to establish temporary rates which would yield operating revenues in an amount less than 5 per cent of original cost less depreciation when the particular circumstances justify it. By setting a limit below which the Commission cannot go in imposing temporary rates, the Legislature has, in those cases, provided not only for non-confiscation itself, but also for a minimum non-confiscatory temporary rate.

We respectfully represent that a rate provision setting no inflexible standards, and allowing for full observance of the expressions of this Court, as does Section 310(a), cannot possibly be unconstitutional.

The Court below found as a fact that the Commission proceeded under paragraphs (a), (c) and (e) of Section 310 (R. 1126). It concluded that, since appellee does not have continuing property records, the Commission should have proceeded under paragraph (b) of Section 310 (R. 1127). The lower Court apparently placed little reliance upon this holding, since it does not once mention this conclusion in the opinion, which discusses only paragraph (a) and paragraph (e). The conclusion is not supported by reference to any words of the Public Utility Law. A mere glance at

paragraph (b) discloses that the Pennsylvania Legislature, in that paragraph, simply prescribed an **alternative** temporary rate procedure for utilities having no continuing property records. The paragraph **authorizes**, but does not **require**, the Commission to prescribe temporary rates for a utility lacking continuing property records which will satisfy the minimum limitation of the paragraph. The paragraph provides that the Commission "may", for such a utility, prescribe temporary rates satisfying such limitation.

This Court has repeatedly stated that judicial inquiry into the constitutionality of rates looks to effect: **Los Angeles Gas & Electric Corp. v. Railroad Commission of California**, 289 U. S. 287, 304, 305; **West Ohio Gas Co. v. Public Utilities Commission of Ohio**, (No. 1), 294 U. S. 63, 70. Therefore, the provisions of paragraphs (a), and (b) of Section 310 setting up alternative procedures cannot, ipso facto, be unconstitutional. The difference between the paragraphs lies in the difference in lower limitations below which the Commission cannot go in prescribing temporary rates. The present record does not specifically disclose which limitation would be more advantageous either to the company or the public, in view of the power given the Commission in paragraph (b) to make adjustments. Neither paragraph sets forth any standard or formula to which the Commission must adhere. Constitutional limitations remain in full force and effect, and the Commission is in no way required to violate any such restriction.

## III.

**RATES THAT AFFORD TO A PUBLIC UTILITY A FAIR RETURN UPON THE PRUDENT ORIGINAL COST OF ITS PROPERTY USED OR USEFUL IN PUBLIC SERVICE SHOULD NOT BE HELD CONFISCATORY.**

## A.

**Judicial Tests of Confiscation and Scope of Judicial Review.**

Regardless of the disposition of the contentions urged in part II of this brief the rates prescribed in the Commission order should not be enjoined unless they violate the Federal Constitution by resulting in the confiscation of property of the appellee.

It is well established that judicial interference with the legislative function of rate making will be resorted to only if the rates prescribed by the Commission, in the totality of their effect, result in the confiscation of the utility's property: **United Gas Co. v. Texas**, 303 U. S. 123, 143. Further, since "in the question of rate making a strong presumption exists in favor of the conclusions reached by an experienced administrative tribunal" (**Darnell v. Edwards**, 244 U. S. 564, 569), it is well established that the fact of confiscation must be clearly shown by the complaining public utility: **Los Angeles Gas & Electric Corp. v. Railroad Commission of California**, 289 U. S. 287, 305; **St. Joseph Stock Yards Co. v. United States**, 298 U. S. 38, 53.

The scope of review in determining the question of confiscation has been clearly stated by the Court in a number of cases. In **West Ohio Gas Co. v. Public Utilities Commission of Ohio**, (No. 1), 294 U. S. 63, at page 70, the Court stated:

"Our inquiry in rate cases coming here from the state courts is whether the action of the state officials **in the totality of its consequences** is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern Ry Co. v. Virginia*, 290 U. S. 190) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error." (Emphasis supplied)

To demonstrate the fact that rates are just and reasonable, and do not violate constitutional provisions, it is first necessary to determine the test by which the issue of confiscation is to be resolved.

Following a line of cases that were more or less indefinite as to the elements that must be considered in determining the basis of the rates of public utilities, there emerged from the decision of the Supreme Court in **Smyth v. Ames**, 169 U. S. 466, the rule that one element essential to the determination of value is the cost of reproduction. The crux of the Court's opinion is (p. 546, 547):

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway

under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth. \* \* \*

The above decision has been interpreted to mean that one of the controlling factors which must be taken into consideration in determining the rate base of a utility property is the cost to reproduce the property.

We respectfully urge your Honorable Court to announce the principle that the proper test to determine whether or not rates violate the Federal Constitution is whether or not the annual gross revenues permitted by the rates provide, over and above operating expenses and an allowance for depreciation, a compensatory return upon the prudent original cost of the utility property dedicated to the public use.



The position which the Pennsylvania Commission urges the Court to take in its decision in this case will necessitate a modification of *Smyth v. Ames* and the decisions which have followed its authority. We respectfully represent that such a step is necessary if the end of regulation is to be accomplished, namely, rates that are just and reasonable to the consumer and compensatory to the utility.

### B.

#### **The Reproduction Cost Doctrine is Unsound and Unworkable.**

##### **1. The Reproduction Cost Doctrine Hinders Effective Rate Regulation.**

Regulatory commissions have attempted to comply with the decision in *Smyth v. Ames*, interpreted as requiring consideration of reproduction cost. Many of these commissions, including the Pennsylvania Commission, have found that the reproduction cost principle, far from being a guide to the solution of the problem, has proved an element which makes the task of proper rate regulation almost impossible.

Under the reproduction cost rule of *Smyth v. Ames*, it is necessary to embark upon the conjectural calculation of all the details of cost of reconstructing the property under present-day conditions. It is necessary to determine present-day prices of each item of property. Where items are no longer manufactured or available, an estimate must be made of what it would cost to reproduce them if someone were manufacturing them. Present-day labor prices are applied to deter-

mine what it would cost to install this theoretical plant. Here the theory again departs from certainty and actuality, and requires the conjecture as to whether or not the construction conditions now existing should apply, and whether modern devices should be used.

The illogical character of the reproduction cost theory is indicated by the Court's rejection of hypothetical repaving costs: **Des Moines Gas Co. v. Des Moines**, 238 U. S. 153, 172 and **Dayton Power & Light Co. v. Public Utilities Commission of Ohio**, 292 U. S. 290, 311, and the rejection of hypothetical cost of financing: **Galveston Electric Co. v. City of Galveston**, 258 U. S. 388, 397; **Wabash Valley Electric Co. v. Young**, 287 U. S. 488, 500; **Los Angeles Gas & Electric Corp. v. Railroad Commission of California**, 289 U. S. 287, 310; **Dayton Power & Light Co. v. Public Utilities Commission of Ohio**, 292 U. S. 290, 310.

After the plant is physically reconstructed in theory, and all the property and labor costs are included, additional theoretical costs are added, many of which were never experienced by the utility, but occur only in the mind of the reproducing theorist. Architects' fees are added, despite the fact that in many instances if an architect to-day produced the type of building which is actually being used, he might encounter difficulty in collecting his fee, as well as jeopardize his professional standing. Calculations are made as to what the interest charges would be during the course of construction. Engineering experts, it is said, would be called in; legal fees would allegedly be incurred in tracing the title to land which, in fact, has been owned

by the utility for many, many, years. These overheads or intangibles have literally flooded the calculation of the reproduction cost until, in some instances, their total amounts to 30 per cent of the actual physical costs of the property. In the present case, the company figure is approximately 24% (R. 19).

It is not unexpected, therefore, that, in certain instances, reproduction cost estimates during periods of low prices exceed the actual original cost of plants constructed in periods of prevailing high prices. Such was the condition disclosed by the record presented to the California Commission in the recent Pacific Gas & Electric Company litigation (1 P. U. R. (N. S.) 1).

But, alas, the Commission cannot rest with consideration of a single reproduction cost estimate. Both sides appear with elaborate reproduction cost estimates, although only by the title of the exhibits could one identify anything common to those presented by the companies and those presented by their opponents. Reproduction cost estimates submitted in rate cases vary widely. In one Pennsylvania case the range was from approximately \$22,000,000 to approximately \$58,000,000: *Scranton Spring Brook Water Service Co. v. Public Service Commission*, 119 Pa. Superior Ct. 117.

It is primarily the necessity for unravelling these differences to determine the propriety of assumptions

and findings that so delays rate cases.<sup>1</sup> While time and expense are taken up by cross-examination on theoretical hypothetical conjectures, and in considering all of these detailed matters, material prices are changing and labor costs are fluctuating. It is these changes in prices and costs which render the theory of reproduction cost useless to the regulatory body. Often, by the time a reproduction cost rate base is determined, it is out of date.

**Smyth v. Ames**, and the other decisions upholding the reproduction cost doctrine, do not constitute the only expressions of judicial opinion upon the subject of utility valuation. In 1922, a concurring opinion was written in the case of **Southwestern Bell Tel. Co. v. Public Service Commission**, 262 U. S. 276 by Mr. Justice

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<sup>1</sup> A very typical example of what faced the Pennsylvania Court in a case on appeal from the Pennsylvania Commission is afforded by *Scranton-Spring Brook Water Service Co v. Public Service Commission*, 119 Pa. Superior Ct. 117. Complaints were filed in 1928 with the Pennsylvania Commission against a tariff of the Scranton-Spring Brook Water Service Company. The decision is dated October 2, 1935 and states (119 Pa. Superior Ct. 122): "These appeals arise from one record and were argued together. They will be disposed of in one opinion. The record is monumental in size. When it first came into this court (See *Scranton-Spring Brook Water Service Co. v. P. S. C.*, 105 Pa. Superior Ct. 203) it consisted of 4,000 pages of printed testimony and fourteen large quarto volumes of photostatic exhibits. On these appeals it has been increased by 1,100 pages of printed testimony and five additional quarto volumes of photostatic exhibits, taken pursuant to interim reports of January 3, 1933 and February 7, 1933, respectively."

Brandeis, which opinion, concurred in by Mr. Justice Holmes,<sup>1</sup> states clearly and concisely the principal objections to the doctrine of *Smyth v. Ames* in the following language, at page 289:

"I concur in the judgment of reversal. But I do so on the ground that the order of the state commission prevents the utility from earning a fair return on the amount prudently invested in it. Thus, I differ fundamentally from my brethren concerning the rule to be applied in determining whether a prescribed rate is confiscatory. The Court, adhering to the so-called rule of *Smyth v. Ames*, 169 U. S. 466, and further defining it, declares that what is termed value must be ascertained by giving weight, among other things, to estimates of what it would cost to reproduce the property at the time of the rate hearing.

"The so-called rule of *Smyth v. Ames* is, in my opinion, legally and economically unsound. The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the capital so invested the Federal Constitution guarantees to the utility the opportunity to earn a fair return. Thus, it sets the limit to the power of the State to regulate rates."

\* \* \* \* \*

And, at page 306:

"The adoption of the amount prudently invested as the rate base and the amount of the capital charge as the measure of the rate of return would

<sup>1</sup> See also *Pacific Gas Co. v. San Francisco*, 265 U. S. 403, 416; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 421; *St. L. and O'Fallon R. Co. v. United States*, 279 U. S. 461, 488 and 549; *United Railways v. West*, 280 U. S. 234, 255; *Railroad Commission of California v. Pacific Gas & Electric Co.*, 302 U. S. 388; *McCart v. Indianapolis Water Co.*, 302 U. S. 419, 423.

give definiteness to these two factors involved in rate controversies which are now shifting and treacherous, and which render the proceedings peculiarly burdensome and largely futile. Such measures offer a basis for decision which is certain and stable. The rate base would be ascertained as a fact, not determined as matter of opinion. It would not fluctuate with the market price of labor, or materials, or money. It would not change with hard times or shifting populations. It would not be distorted by the fickle and varying judgments of appraisers, commissions, or courts. It would, when once made in respect to any utility, be fixed, for all time, subject only to increases to represent additions to plant, after allowance for the depreciation included in the annual operating charges. The wild uncertainties of the present method of fixing the rate base under the so-called rule of *Smyth v. Ames* would be avoided; and likewise the fluctuations which introduce into the enterprise unnecessary elements of speculation, create useless expense, and impose upon the public a heavy, unnecessary burden."

The thoughts expressed in this opinion have been adopted as the expression of a school of thought that has continually grown until today, it is respectfully represented, the majority of the thoughtful writers on the subject of the valuation of public utilities are of the view that the doctrine of prudent investment should be substituted for the reproduction cost doctrine of *Smyth v. Ames*.

Many non-judicial authorities may be cited which stress the failure of the *Smyth v. Ames* doctrine to carry out the duty which it is designed to perform in



the regulatory procedure. A striking example is the treatise by James C. Bonbright, "The Valuation of Property," Volume II, pp. 1081, 1082, (1937) :

"The sharp disagreement among American economists as to what constitutes a proper rate base makes all the more striking their apparently unanimous agreement that, whatever this base should be, the one measure which is outlawed is the very measure which the Supreme Court has held to be controlling—namely, the 'value' of the properties as of the time when the rates are under consideration."

Upon the merits of the prudent investment theory, which is herein urged as the proper alternative to the *Smyth v. Ames* fair value doctrine, the same text states (pp. 1085, 1086) :

"Justice Brandeis has been the most distinguished exponent of the prudent-investment principle,\* which has been favored by the majority of economists who have written recently on the subject.<sup>10</sup> Its primary advantages, according to its defenders, are twofold. In the first place, it avoids the hopelessly prolonged and expensive contro-

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\* "See his concurring opinion (dissenting as to method) in the Southwestern Bell Telephone case, *supra* note 7."

<sup>10</sup> "Bauer and Gold defend the 'prudent-investment' basis in the monograph mentioned at the beginning of this chapter. For a defense by the present writer, see his 'Railroad Valuation with Special Reference to the O'Fallon Decision,' 18 *Am. Econ. Rev. Supp.* 181 (March, 1928); 'The Economic Merits of Original Cost and Reproduction Cost,' 41 *Harv. L. Rev.* 593 (1928); and the Minority Report of Commissioners Walsh, Bonbright, and Adie, State of New York, Commission on the Revision of the Public Service Commission Law (Albany, 1930). See also Mosher and Crawford, *Public Utility Regulation* (New York, 1933); Jones and Bigham, *Principles of Public Utilities* (New York, 1931); and articles cited in the last two textbooks.

versies attendant on a procedure of rate making which calls for periodic or occasional reappraisals. This advantage is not to be brushed aside as involving a minor issue of 'administrative convenience.' The history of regulation under the 'fair-value' rule of the Supreme Court is believed to prove that rate control by valuation is not merely difficult—it is practically impossible.

"In the second place, the prudent-investment rule would greatly reduce the speculative character of public utility investments. Under the replacement-cost rule, no less than under that compromise procedure of rate making called for by the 'fair-value' doctrine, investors in public utility equities are compelled to gamble on the future valuations that will be placed upon the properties. The prudent-investment principle, to be sure, will not remove the speculative feature from utility stocks; but it will at least minimize it.

"The greater safety of utility securities under the prudent-investment method of control is held to be advantageous, not alone from the standpoint of small investors and of financial institutions, but also from the standpoint of ratepayers. \* \* \*

A well considered article recently appeared in the "Columbia Law Review," prepared by Robert L. Hale entitled "Conflicting Judicial Criteria of Utility Rates—The Need For a Judicial Restatement" (38 Columbia Law Review 959) in which the writer urges that a clear and definite statement be made by the Court substituting some workable formula of the *Smyth v. Ames* rule of determining the value of utility properties.

We respectfully refer your Honorable Court to Appendix A of the brief of the Federal Power Commission filed with the Court in the case of *Railroad Commission*

of *California v. Pacific Gas & Electric Company*, 302 U. S. 388. That appendix contains an excellent summary of the authorities on the subject.

We cannot place too much stress upon the necessity which we feel exists for a clarifying decision authorizing a state commission to determine utility rates upon a workable and just formula, and we submit that the proper formula is a compensatory rate of return upon the prudent original cost of the property devoted to public use.

## 2. The Reproduction Cost Doctrine is Unsound from an Engineering Standpoint.

In 1911, the American Society of Civil Engineers appointed a special committee to formulate principles and methods for the valuation of railroad properties and other utilities. This committee filed its final report on October 28, 1916, and the report is published in *Transactions of the American Society of Civil Engineers*, Vol. LXXXI, December, 1917, at page 1311. This report was compiled by a committee of engineers actively engaged in different types of engineering, and clearly reflects the difficulties of the engineering profession at that time with regard to the principles of valuation. (See preface of report)<sup>1</sup>

<sup>1</sup> " \* \* \* the fact that nine men of widely different training and experience, practicing in different professional lines and fields, have been able to come finally to common belief upon most of the subjects discussed—the principles which should control the valuation of normal public utility properties—leads the Committee to hope that this report may be helpful to others, and may serve to clarify this very involved subject, to the common advantage of public service corporations and the public served, by aiding in the establishing of procedure and in the reducing of the uncertainties of valuation and rating of public utility properties."

It may not be amiss to state that this report is to-day regarded by many engineers and others as one of the outstanding expositions of the subject. The report includes a chapter on original cost in which it defines clearly and succinctly the principles of original cost and the methods of determining such cost (page 1354 of report):

"In the absence of any generally accepted or well-defined legal meaning of this term, the Committee has defined it as 'the cost of the original construction, plus all charges against capital proper, under approved accounting principles, for expenditures incurred thereafter, and minus all proper credits to capital for the cost of property which has been disposed of or otherwise retired.'

"Under this definition, the original cost to date of a property is the first cost of the identical property units now in use, including overhead charges. This definition accords with modern methods of accounting, by which the cost of property retired is credited to the fixed capital account to which it stands charged, or to some corresponding account, and the cost of property, added as a replacement, or otherwise, is debited to the fixed capital account or other corresponding account; it seems, also, to conform more nearly than any other definition with the decisions of the Courts that property which has been retired shall be excluded (excepting its salvage value) when making a valuation."

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The accounting standards described above as "modern" exist today, and are common to all prescribed classifications of accounts. Such accounting requirements have been in effect for electric utilities since 1919 in Pennsylvania. In addition thereto con-

tinuing property records have been prescribed for many types of utilities including electric utilities. All prescribed accounts, including continuing property records, require the identification of property at its original cost.

The committee report continues with a chapter on "cost of reproduction." In sharp contrast to the clarity and succinctness of the chapter on original cost, this chapter is drawn out, sets forth divergent views, and indicates the maze of problems and the lack of unanimity of thought upon this subject. Difficulty arises at the outset in the definition of "Cost of Reproduction." At page 1359 of the report it is said:

"The estimated cost of reproducing the property without deduction for the loss of value due to age or other causes."

"The practice of those engaged in valuation work, from the beginning of such work up to the present time, has varied widely in the matter of determining the cost of reproduction. Some base such cost on existing physical conditions, others on historic conditions, and still others combine the two. Some engineers have included only those physical property units which were actually created in the construction of the property, that is, they have used historic conditions, as to items of cost, with present-day prices for labor and material. Others have used substitute units, or historic prices, or original instead of present methods of work, and still others have used original conditions, original prices, and original methods, in making an estimate or reproduction cost.

"This failure of engineers engaged in valuation practice to agree on a uniform conception of re-

production has cast some doubt on the real worth of Cost of Reproduction as one of the measures value."

Following a recital of the legal and practical difficulties facing the profession, the report concludes (page 1377) :

*"Conclusion as to the Proper Conception of Reproduction.*—In line with the foregoing discussion, the Committee recommends that reproduction estimates be based on the assumption that the identical property is to be reproduced, rather than a substitute property; that while apparent present-day condition, that would affect the cost of reproducing the property, must be considered, in any logical estimate, yet history must also be considered to determine what is to be reproduced, the conditions under which it is to be reproduced, and how the estimate must be made; that for all those items, concerning which there can be no doubt, the engineer should use the basis plainly applying, and that for those that are doubtful, or have been questioned, he should present the effect of the use of the different bases clearly, that the determining body may have the data for a wise decision; and that normal present conditions shall determine the prices and methods for doing the work." (Emphasis supplied.)

The emphasized portion of the above quotation is, we respectfully submit, a devastating criticism of the theory of cost of reproduction. The theory is not susceptible to accurate conclusion by those most learned in the details of its formulation. If the experts of the engineering profession must leave to the wise decision of regulatory commissions the guess of the cost of re-



production, is it amiss to declare that the same is not susceptible to accurate calculation?

This learned committee report, carefully considered for a period of several years during the formative stage of utility regulation, regarded reproduction with a doubt and the years that have followed have justified the doubt. We most strongly reiterate the fact that only by casting aside the unworkable principle that regulatory bodies must determine this undeterminable value of reproduction cost, will regulation be able to progress.

### **3. The Reproduction Cost Rule is Unsound from an Accounting Standpoint.**

There is no set of accounts which a regulatory commission can require a utility to keep in order to disclose the various elements of value now required by judicial mandate of *Smyth v. Ames* to be considered in the determination of the rate base; and, obviously, no regulatory body can be expected to exercise effective control of utility rates when reproduction costs, one of the principal elements to be considered in the rate base, cannot be currently reflected on a utility's books of account.

Recently, uniform systems of accounts have been adopted generally by state and federal regulatory bodies throughout the country which provide that original cost (estimated if not determinable from the records) of utility plants in service shall be currently shown on the books of account. The constitutionality of the original cost provision in the system of accounts

prescribed by the Federal Communications Commission has been upheld: **American Tel. & Tel. Co. v. United States**, 299 U. S. 232. To insure the prompt availability of a reliable record of original cost, certain state commissions have supplemented the uniform system of accounts by prescribing rules and regulations designed to classify the various units of physical property as related to the original cost. These supplemental records are known as "continuing property records." The Pennsylvania Commission has issued orders requiring all electric utilities, whose fixed capital exceeds \$100,000, and all natural and manufactured gas utilities with annual gas operating revenues in excess of \$100,000, to maintain continuing property records.

When these orders have been complied with, there will be available from the books of a utility the original cost of its property; there will be quickly available a statement in dollars and cents of the amount of private capital invested in the property used in public service. It will be a statement that will not be subject to the illusions and guesses of the reproduction cost theory.

As a practical example of the quandary in which the reproduction rule places public utilities in trying to adjust their books in order to have them picture the fluctuating "fair value" of the property of the corporation, we refer to the recent testimony of H. Hobart Porter, President of the American Water Works & Electric Company, Inc., before the Securities and Exchange Commission in the matter of American Water-

works & Electric Company, Inc., The West Penn Electric Company, Docket No. <sup>54-1</sup>46-68, at a hearing held in Washington, D. C., on September 15, 1937, in which the Pennsylvania Commission intervened.

Mr. Porter described the acquisition by American Waterworks and Electric Company, Inc., a Delaware corporation, of the assets of the American Waterworks and Electric Company, Inc., a Virginia corporation, in 1927. He testified that, subsequent to the acquisition, there was a book appreciation in the valuation of the assets in the sum of \$51,000,000. This increased valuation was reversed in 1936, because of a "change of fashions"<sup>1</sup>, and "we try to change with the fashions."

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<sup>1</sup> At the possible expense of unduly prolonging this brief, we set forth some of the testimony by Mr. Porter in this proceeding as an example of the uncertainty which confronts the management of operating utilities to keep abreast of the reproduction cost rule: (pp. 196, 197, 198, 202)

"Q. Do you recall the valuation of the assets of the American Water Works and Electric Company, Incorporated, the Virginia corporation, just before that merger?

"A. I do.

"Q. What was that figure?

"A. Well, it was some \$51,000,000 less than it was later. I do not recall what it was. Mr. Ross can give you all of the details about that.

"Q. But, I understand from that that the Delaware corporation took unto its books assets which had been held by the Virginia corporation at an increased valuation of about \$51,000,000.

"A. I think that figure might be \$51,000,000 or \$52,000,000.

"Q. What was the basis for that increased valuation?

"A. Well, from my point of view, it was embarrassment. I had a call from a distinguished looking old gentleman one day who said, 'I have always had a high opinion of you as a very honorable man. I own stock in the American Water Works. It sells for so many dollars a share and your last annual balance sheet shows that your stock is only carried on your books at very much less than that.'

We therefore reiterate that the reproduction cost doctrine is unsound from an accounting standpoint. It should be discarded and replaced by the prudent original cost doctrine, which is subject to accurate accounting treatment.

C.

**The Temporary Rates Here Involved Permit More Than a Compensable Return on Prudent Original Cost.**

The temporary rate base found proper by the Commission is \$5,250,000. This sum is \$280,756 in excess of the company estimate of undepreciated original cost of \$4,969,244 (R.791), and more than \$650,000 in ex-

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Either you are not telling your stockholders the truth when you say, when you carry it at that valuation and are encouraging them to sell out, or you know something about it, as to how much really more valuable it is. Now, don't you think that the stockholders are entitled to know what the value of its assets are?"

"That is boiled down, a long conversation. I felt quite good when he came in, I felt very small when he went out, and I called the directors together and told them I would like to have a valuation made, a very conservative valuation, of the securities we had.

"Such valuation was made and when the change took place, that was when the Delaware corporation made this increase which has, last year, been reversed. It was never of any particular value to us. It was intended to try to tell the stockholders what we believe was more nearly the value of the securities, which his securities represented.

"Q. Where did this stockholder obtain his idea of the value of the securities?"

"A. Well, he had the balance sheets of the company showing we carried the stock at a certain amount and he compared the stock market price of the various securities of the American Water Works, outstanding, and the two showed a difference of many tens of millions. I would not dare to say at this time whether it was \$30,000,000 or \$130,000,000, but a very great disparity.

"Q. Whose opinion was the market value?"

"A. Well, the people who buy and sell stock in the street.

cess of the Commission finding of undepreciated original cost of \$4,600,000 (R. 23). The Commission, to arrive at a proper original cost, found it necessary to reduce the company estimate by \$349,880 representing cost of financing.

The record affirmatively shows by the testimony of company witness Boenning that no cost of financing was experienced. (R. 1063) Cost of financing must be shown to have been actually incurred by the utility claiming allowance therefor. See *Galveston Electric Co. v. City of Galveston*, 258 U. S. 388, 397; *Wabash Valley Electric Co. v. Young*, 287 U. S. 488, 500; *Dayton Power and Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290, 310; *Cheltenham and Abington Sewerage Co. v. Public Service Commission*, 122 Pa.

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"Q. Then, a revaluation of the assets of the Virginia corporation was made?

\* \* \* \* \*

"Q. Well, can you tell whether or not any additional securities were issued by the Delaware corporation in addition to those which had been outstanding by the Virginia corporation?

"A. I do not think so. My recollection is that the entire amount subject to the reappraisal was put into capital surplus.

"Q. Not capitalized at all?

"A. Oh, no. I do not think so. That is the best of my recollection.

"Q. Does that \$51,000,000 revaluation still appear on the books of the American Water Works and Electric Company Incorporated?

"A. Fashions have changed and we try to change with the fashions and that in effect—I am not an accountant—but it probably was not done that way. But, in my crude way I would say that item was reversed last year.

"Q. Why?

"A. Because of the change of fashions. We did it innocently, but a great many people suspected some wicked ulterior purpose and there was not any, and the easiest thing to do was to undo it."

Superior Ct. 252. The Commission exclusion of cost of financing was entirely proper.

This adjustment reduced the company original cost estimate to \$4,619,364; and the Commission found that, for temporary rate purposes, the original cost of the property was \$4,600,000. (R. 23) This finding approximates not only the adjusted company original cost estimate of \$4,619,364 (R. 23) and the company book cost figure of \$4,578,793, (R. 732) but also the Commission original cost estimate of \$4,576,169.73 (R. 23)

No deduction was made in any of the estimates or in the finding of original cost, for donated capital or any part of the cost of the steam generating plant, which plant is partly used in the production of steam sold for steamheating purposes by York Steam Heating Company, an affiliate of appellee, although both deductions would have found support in the record.

To \$4,600,000 which may be taken as the prudent un-depreciated original cost of the property as of November 30, 1936, for temporary rate purposes, we may add \$142,851.07 representing net additions to September 30, 1937 (R. 1038), and \$164,000 for working capital, to reach a prudent original cost rate base of \$4,906,851.07. The Commission ordered the actual annual revenues of \$2,202,328.81 reduced by \$435,000, leaving predictable revenues of \$1,767,328.81. Deducting allowable operating expenses \$1,382,829, which include an allowance for annual depreciation, leaves \$384,499.81 available for return. This represents return at the rate of 7.83 per cent on the prudent original cost rate base of



\$4,906,851.07. We submit that a return of 7.83 per cent upon prudent original cost plus working capital is far above the line of confiscation, and that, therefore, the injunction restraining the enforcement of the temporary rates involved should be dissolved by this Court.

#### IV.

**THE COMMISSION FINDINGS AS TO RATE BASE, OPERATING EXPENSES, AND RATE OF RETURN, ARE REASONABLE AND PROPER AND SUPPORTED BY COMPETENT EVIDENCE.**

##### A.

##### **Rate Base.**

The company claimed before the Commission that the fair value of its property should be \$5,500,000. (R. 804) This claim was based on the various company estimates, to which were added allowances for going concern value and working capital in the amounts of \$400,000 and \$150,000, respectively. (R. 800)

In arriving at the rate base the Commission added \$164,000 for working capital to its findings of depreciated reproduction and original cost, and gave due consideration to going concern value, although making no specific allowance therefor.

##### **1. Going Concern Value.**

In the light of the testimony of record, the action of the Commission in not making a specific allowance for going concern value was entirely warranted. The

company witness who testified on going concern value gave the Commission no sound basis upon which to make a separate finding relative thereto. Much of his testimony, based on consideration of the historical development of predecessor companies, dealt with lag in earnings, and was predicated upon uncertain facts, unsupported opinion and sheer conjecture. The witness himself stated that his lag calculation produced fantastic figures for going concern value which were far beyond what he considered the company to possess in that respect. (R. 798) The recent case of **Railroad Commission of California v. Pacific Gas & Electric Co.**, 302 U. S. 388, is authority for the Commission refusal to make a specific finding upon evidence of that character. The Court there declared (pp. 397, 398):

"There is no principle of due process which requires the rate making body to base its decision as to value, or anything else, upon conjectural and unsatisfactory estimates. We have had frequent occasion to reject such estimates. \* \* \*"

See also **Galveston Electric Co. v. Galveston**, 258 U. S. 388, 395, 396.

Further, the decisions of this Court do not require a separate allowance for going concern value. The latest expressions to this effect are found in the cases of **St. Joseph Stockyards Co. v. United States**, 298 U. S. 38, 62, 63, 64, and **Denver Union Stock Yards Co. v. United States**, 304 U. S. 470, 479.

In the instant case, although the Commission did not make a separate allowance for going concern value, it is obvious that this element is liberally pro-

vided for. In addition to valuation of the property from the standpoint of a going concern, the Commission set a fair value figure of \$5,250,000, which is substantially in excess of its findings of depreciated reproduction cost and depreciated original cost, including working capital, in the amounts of \$4,901,803 (R. 29) and \$4,258,000, (R. 29) respectively.

## 2. Net Additions to Property Between November 30, 1936, and September 30, 1937.

It may be argued that the failure of the Commission to make allowance for net additions to the company's plant and property, from November 30, 1936 to September 30, 1937, in the amount of \$142,851.07 was improper. While it is true that such allowance was not made, confiscation could not possibly result therefrom. To demonstrate this, we draw to the attention of the Court the fact that the Commission did not deduct depreciation accruing during the period November 30, 1936, to September 30, 1937. Had such deduction been made for the period above stated it would have been in approximately the same amount as the net additions to the company's plant, so that the net result as to fair value would not have been affected. This clearly appears when it is noted that the annual depreciation allowed is in the amount of \$142,531. (R. 37)

## 3. Conclusion.

The Court below, while it objected to the Commission's method of finding fair value, took no exception to the **amount** found by the Commission to represent fair value for temporary rate purposes, and made no

fair value finding of its own. The Court below may have intended to affirm the fair value rate base used by the Commission in saying (R. 1133) :

"The final report of the commission and the briefs of the parties contain many analyses and a mass of figures which it is difficult for one not a certified public accountant or technical engineer to understand. Some of the figures may be unimportant, but others are important. The commission found that the rate base or fair value of the company's property for the purpose of prescribing temporary rates is \$5,250,000."

It was argued below by the company that the Commission should have given effect to an undepreciated reproduction cost estimate as of May 31, 1937, in the amount of \$6,019,832. However, the company not only failed to submit any estimate of depreciation to be subtracted from this estimate, but it did not feel required to revise its fair value claim of \$5,500,000 based upon 1936 reproduction cost figures. Even as late as the filing of the Bill of Complaint in the Court below the company regarded \$5,500,000 as the fair value of the property (R. 45, 57).

Conclusive demonstration of the reasonableness of the Commission action so far as rate base is concerned is given by the fact that the amount available for return under the temporary rates is \$384,499.81, representing 6 per cent return on a rate base of \$6,408,330.16. The Commission ordered the actual annual revenues of \$2,202,328.81 reduced \$435,000, leaving predictable revenues of \$1,767,328.81. Deducting from \$1,767,328.81 the allowable operating revenues of \$1,382,829, exclusive of return, leaves \$384,499.81 avail-

able for return. As stated, if capitalized, this represents a rate base of \$6,408,330.16.

**B.**

**If Reproduction Cost Must Be Considered On the Issue of Confiscation, the Record In This Case Contains Sufficient Evidence, and the Commission Order Evidences Sufficient Consideration, to Sustain the Rates Prescribed by the Commission.**

If your Honorable Court does not adopt the principles of rate-making which we have urged are vital to effective Commission regulation, then the further questions arise as to whether or not the record in this case was sufficient, and whether or not the order of the Commission indicates that the prescribed rates fulfill constitutional requirements.

Allowable operating revenues, operating expenses and rate of return are treated elsewhere in this Brief. The principles applying to such matters are the same regardless of rate base. Assuming the Commission findings on those points to be correct, as we believe they are, the question of confiscation depends solely upon what standard of value is adopted in determining the rate base. If the prudent original cost of the property devoted to public use is not the proper standard, then it is respectfully represented that the Commission had other methods which it could justly adopt. The elements for determining fair value are set forth by the Court in *Smyth v. Ames*, supra, and subsequent decisions. One of the elements approved by the Court

is the cost to reproduce the property. The company experts, as well as the Commission experts, in this case presented evidence relating to the present cost to reproduce the property. As in every such case, these estimates vary widely. Nevertheless, the Commission in its order conclusively shows that the temporary rates prescribed produce a return of not less than 6 per cent upon the reproduction cost of the property of appellee.

The company offered reproduction cost estimates of its property, exclusive of working capital and going concern value as of November 30, 1936, amounting to \$5,572,434 new and \$4,950,609 new less accrued depreciation (R. 629). The company estimate of the reproduction cost new of its property exclusive of overhead costs was as follows:

Steam Generating System .....	\$1,216,963
Transmission System .....	685,296
Distribution System .....	1,845,067
Utilization System .....	280,677
General Property .....	460,900
<hr/>	
Total .....	\$4,488,903

These figures were based upon a physical inventory of the actual units of property in place, to which were applied manufacturer's and dealer's quotations of competitive market prices for like material, together with the prevailing rates in the City of York and vicinity for labor necessary in construction. The Commission accepted these figures in its finding of the reproduction cost new of the property, and made no deduction whatsoever for consumer donated capital,



nor for the part of the steam generating plant which a Commission witness testified (R. 184) was not used and useful in the company's electric service.

The company estimated that the overhead costs of reproducing its property new amount to \$1,083,231. (R. 1020) This total is itemized in the following tabulation, which shows the amount of each overhead item during construction, and the percentage used to estimate each item.

<i>Item of Overhead Cost</i>	<i>Amount</i>	<i>Percentage</i>
Organization .....	\$ 67,333	1½
Engineering and Superintendence .....	202,001	4½
General Officers' and Clerks' Salaries .....	44,889	1
General Officers' and Clerks' Expenses .....	33,667	¾
Office Supplies and Expenses .....	11,222	¼
Law Expenditures .....	22,445	1½
Injuries and Damages .....	44,889	1
Insurance .....	22,445	1½
Taxes .....	44,889	1
Interest .....	298,961	6
Cost of Financing .....	290,490	5½
<b>Total .....</b>	<b>\$1,083,231</b>	<b>22½</b>

Although the arithmetical sum of the percentages is 22½ per cent the percentages are applied to various subtotals so that the result of the allowances (\$1,083,231) represents 24.1 per cent of the undepreciated direct cost. Similar application of the individual percentages to depreciated direct cost subtotals results in

\$969,263, representing 24.3 per cent of the depreciated direct cost.

The witness who prepared this estimate for the company testified that these figures represented solely his judgment, and found no support whatsoever in the books of the company. (R. 675, 676).

The Commission expert engineering witness, L. C. Bierman, testified that, in his judgment based upon full experience, certain overhead allowances requested by the company were greatly excessive, and that a total overhead allowance representing approximately 18 per cent of the direct cost was reasonable. (R. 223) The percentages applied were as follows: Preliminary and organization expenses,  $1\frac{1}{2}$  per cent; administration, legal and taxes  $1\frac{1}{2}$  per cent; engineering and supervision 5 per cent; interest during construction 6 per cent; and cost of financing 3 per cent. The total of these percentages is 17 per cent, but cumulative application of the various percentages will give a sum in dollars equivalent to approximately 18 per cent of the direct cost. He stated specifically that the company allowances of  $1\frac{1}{2}$  per cent for organization, 5 per cent for engineering and superintendence, and 6 per cent for interest during construction were proper. However, he testified that the company claim of 5 per cent for cost of financing should be rejected and a 3 per cent allowance made for this item (R. 226-228).

After giving due consideration to both of these estimates, the Commission rejected both claims and made an allowance of 19 per cent for overheads, which figure is extremely liberal in the light of the decisions of this

Court and the recent Pennsylvania appellate Court decisions. This allowance is comparable with the company overhead percentages applied to original cost, the arithmetical total of which is  $19\frac{1}{4}$  per cent (R. 681, 682) including  $7\frac{1}{2}$  per cent for cost of financing, an increase over the  $5\frac{1}{2}$  per cent for this item in the company reproduction cost estimate. Application of the company overhead percentages in a cumulative manner to original cost resulted in a total allowance of \$850,175, representing 20.4 per cent of the undepreciated direct original cost.

In the case of **Dayton Power and Light Co. v. Public Utilities Commission of Ohio**, 292 U. S. 290, Mr. Justice Cardozo, in discussing the Ohio Commission disallowance of certain overheads, stated (pp. 309, 310, 311).

"The appellant complains of the refusal to make allowance for organization or preconstruction costs. There is no evidence that any were incurred, though this of itself is indecisive. **Ohio Utilities Co. v. Public Utilities Comm'n**, 267 U. S. 359, 362. It is conjectural whether they would be incurred in the hypothetical event of a reproduction of the business, and, if incurred, in what amount. The appellants' position as a member of an affiliated system would have a tendency to reduce such expenses to a minimum. We think the ruling is supported by decisions of this court. **Los Angeles Gas and Electric Corp. v. Railroad Commission of California**, supra, p. 310; **Wabash Valley Electric Co. v. Young**, 287 U. S. 488; 500

\* \* \* \* \*

"The appellant complains also of the failure to include the hypothetical expense of financing the business as part of the cost of reproduction.

“Considering the absence of evidence that any such expense had been incurred when the business was established and the uncertainty that it would be incurred if the plant were destroyed and reproduced, we think this item under recent decisions was properly rejected as remote and conjectural. *Wabash Valley Electric Co. v. Young*, *supra*, p. 500; *Los Angeles Gas and Electric Corp. v. Railroad Commission of California*, *supra*, p. 310. We are to remember that the cost of reproduction is a guide, but not a measure. *Los Angeles Gas and Electric Corp. v. Railroad Commission of California*, *supra*, p. 307.

“What has been said of the foregoing items applies with little variation to the reduction of ‘general overheads’ or undistributed expenses during the period of construction, from 17%, the amount claimed by the appellant, to 14%, the amount allowed by the Commission.”

Upon the authority of the *Dayton Power and Light* case and the cases cited therein, it is apparent that the Commission in the instant case might, with perfect propriety, have further reduced the allowances for organization and cost of financing since the company is a member of the Associated Gas and Electric Company affiliated system, a fact which “would have a tendency to reduce such expenses to a minimum,” or it might have eliminated them entirely, since no proof shows them actually experienced.

The company submitted an estimate in the amount of \$4,950,609 of the depreciated reproduction cost of its property, including overhead items (R. 629), claiming that accrued depreciation was equal to 11 per cent of reproduction cost new. Engineering inspection

to determine the present condition of the various units of company property formed the basis of this estimate, and the commission accepted the figure of 11 per cent for accrued depreciation in making its finding of depreciated reproduction cost.

Using the company estimate of direct costs depreciated (\$3,981,347) and 19 per cent thereof for reasonable overhead allowances (\$756,456) the Commission found that the depreciated reproduction cost of the property was \$4,737,803. (R. 21) The Commission rate base of \$5,250,000 is thus \$512,197 in excess of depreciated reproduction cost.

### C.

#### **The Commission Findings As To Operating Expenses Are Reasonable and Proper.**

The Commission found that annual operating expenses of \$1,382,829 were properly allowable. This amount includes allowances for operation and maintenance expenses, taxes, and annual depreciation, but excludes the rate of return allowance of \$315,000.

The Commission allowed operating and maintenance expenses in the amount of \$1,033,898, substantially based upon the actual operating results for the year ended September 30, 1937, as reflected by company Exhibit No. 23, (R. 1038A) a summary of which appears below:

	<i>Net Charges</i>
Production System .....	\$ 37,905
Electricity Purchased .....	602,846
Transmission System .....	9,670

Distribution System .....	73,635
Utilization System .....	15,409
Commercial Department .....	64,673
New Business Department .....	50,927
General Administrative .....	78,931
Other General Expenses .....	185,230
	<hr/>
	\$1,119,226

Although the record contained substantial evidence that certain of the above amounts were questionable, the Commission, for the purpose of temporary rates, allowed them all except the one charged to "Other General Expenses." That amount was adjusted to eliminate the sum of \$127,935 representing expenses incurred in connection with the instant rate case. The Court below held that the Commission elimination of these expenses, together with other similar expenses later incurred, was improper. The total of rate case expenses finally eliminated was \$178,374.50.

### 1. Rate Case Expenses.

The questions of whether or not a regulatory body must allow rate case expenses incurred in a proceeding decided adversely to the utility, and whether or not such expenses may be considered by the Courts in determining the matter of confiscation have not been decided by this Court.

#### (a) Where a Rate Decision Is Adverse To a Utility, Rate Case Expenses Need Not Be Allowed.

The rule that the utility must bear the cost of rate litigation if it does not prevail has been uniformly



followed by the Pennsylvania Courts. **Scranton-Spring Brook Water Service Co. v. Public Service Commission**, 119 Pa. Superior Ct. 117, 144; **Scranton-Spring Brook Water Service Company v. Public Service Commission**, 105 Pa. Superior Ct. 203, 227; **City of York v. Public Service Commission**, 85 Pa. Superior Ct. 139, 141, 142. Since this rule is rooted in substantial consideration of the public interest, we respectfully urge that this Court enunciate it as the law of this case.

In **Wabash Valley Electric Co. v. Young**, 287 U. S. 488, the Commission and the Federal Court below refused to allow rate case expenses in the amount claimed by the utility, and this Court held that such refusal was proper. The question decided was not whether a duty existed to make an allowance for rate case expenses, but whether the allowance as made was unreasonable. Further, the utility did not contend that disallowance of a portion of its claim resulted in confiscation, but argued that such action was arbitrary and without basis in the evidence. It is obvious that the questions involved in the instant case were not presented in the **Wabash Valley Electric Company** case, and consequently that case is not controlling here.

This Court again dealt with the matter of rate case expenses in **West Ohio Gas Co. v. Public Utilities Commission of Ohio (No. 1)**, 294 U. S. 63. There the Ohio Commission found that rates imposed upon the utility by municipal ordinance were confiscatory, and it fixed new rates to take effect retroactively without

making an allowance in operating expenses for the expense incurred by the company in prosecuting its complaint against the ordinance. The Supreme Court of Ohio affirmed the order of the Commission, but, on appeal, this Court reversed, deciding, *inter alia*, that the rate case expenses claimed by the company should have been allowed. This case is cited by the Court below as authority for the conclusion that the Commission action here was improper. However, analysis shows it to be clearly distinguishable. In the West Ohio Gas Company case, the expenses were incurred in opposing rates not promulgated by the company, and the question of confiscation was decided in the company's favor. In the instant case, the expenses were incurred in defending rates initiated by the company, and these rates were found to be excessive. Furthermore, appellee presented testimony showing that it had offered an annual reduction of \$250,000 to the Commission, and that after such reduction it would still earn sufficient revenue (R. 775, 777). These differences, we submit, are fundamental, and therefore the principles expressed in the West Ohio Gas Company case are not applicable here. It is entirely proper that the public be required to bear the expense of defending the utility against oppressive municipal action, but it is unconscionable to call upon the consumers to pay expenses directly attributable to the unjust and unreasonable action of the company. Mr. Justice Cardozo, in his opinion in the West Ohio Gas Company case, recognized these distinctions by stating (294 U. S. 63, 73) :

**"A different case would be here if the company's complaint had been unfounded, or if the cost of**

the proceeding had been swollen by untenable objections."

Complainant is admittedly receiving a return greatly in excess of its own claimed return on its own claimed fair value (R. 777, 804), and offered to reduce its rates \$250,000 per year if the Commission would drop the proceeding (R. 774, 775, 778). In the light of these admissions, it is obvious that the case cannot possibly result favorably to complainant, and that therefore the consumers should not be required to pay rate case expenses incurred with full knowledge of the fact that the rates defended were far too high and, in fact and law, indefensible. The unfairness of burdening consumers with rate case expenses here is even more obvious when we consider the fact that complainant has not given its consumers even the benefit of the \$250,000 reduction to which they were admittedly entitled. This admission was made on the record March 11, 1937 (R. 775, 777), but not one penny of the offered reduction has been made available to the consumers of York and vicinity. Today, those consumers are paying rates which are admittedly at least a quarter of a million dollars annually in excess of reasonable rates.

**(b) Rate Case Expenses Are Irrelevant to the Issue of Confiscation.**

This Court has not decided whether or not a lower Court, in determining the validity of rates fixed by a Commission in substitution for those established by a utility, may base a finding of confiscation on Commission disallowance of rate case expenses.

We submit that the Court below in the instant case erred in so doing.

The West Ohio Gas Company case held that it was the duty of the Commission to allow rate case expenses **after the utility had established confiscation**, but it did not decide that, in initially determining the question of confiscation, such expenses could be considered. On the contrary, the Court points out that in the view of a substantial number of lower Federal Courts **rate case expense allowance should have no bearing when the issue of confiscation is initially decided**, because (294 U. S. 63, 74) :

**"If the rates are inadequate to the point of confiscation, the complainant has no need, it is said, to count upon the expenses of the lawsuit; if they are not already inadequate, the lawsuit cannot make them so. Cf. Columbus Gas & Fuel Co. v. City of Columbus, 17 F. (2d) 630, 640."**

The District Court, in the Columbus Gas and Fuel Co. case cited in the above quotation, was of opinion that allowing the utility's cost of preparing and prosecuting its claim of confiscation directly to produce or influence the finding on the issue of confiscation would be unreasonable and inequitable, and with this position appellants are in entire agreement.

As said by Mr. Justice Reed, in **Petroleum Exploration, Inc. v. Public Service Commission of Kentucky**, 304 U. S. 209, 222, discussing the "irrecoverable expense" of preparing for a Commission hearing, "the expense and annoyance of litigation is 'part of the social burden of living under government.'"

To give weight to rate case expenses in a proceeding to determine the issue of confiscation would, in effect, allow a utility, by the inflation of rate case expenses, to overcome a non-confiscatory rate, and would put a premium on prolonged and expensive rate litigation. Such a rule would inevitably result in defeating proper regulation.

## 2. Non Experienced Operating Expenses

The company offered testimony upon certain items of operating expense which it claimed would in the future be incurred in addition to the experienced items above tabulated. These items are as follows:

1. Rental of Property owned by York Railways Company but used by Edison Light and Power Company	\$18,000
2. Payroll increases made effective during 1937	13,488
3. Pension cost	5,819
4. Proportion of annual salaries of common administrative personnel of respondent and affiliates paid by respondent and reflected on annual basis	20,593
5. Estimate for rate case expense of Commission and regulatory expense to be assessed by Commission under Section 1201 of the Public Utility Law	21,792

Total additional claims, per annum, \$79,692

The first three of the above items were allowed by the Commission for the purpose of temporary rates. The fourth item, in the amount of \$20,593, was properly disallowed by the Commission, and the reason therefor is best expressed in the words of the order as follows:

"The fourth item, amounting to \$20,593, results from a new policy on the part of respondent regarding services rendered by its officers and employees to affiliated companies. By resolution adopted October 28, 1937, the Board of Directors of respondent company provided that the company should 'pay in full the present salaries of all its officers and employees without charging or allocating any part thereof to any affiliated company.' The resolution also provided that 'as rapidly as feasible' the existing practice of having employees of respondent render services to affiliated companies should be discontinued. It is our opinion that the amount claimed as additional expenses, namely, \$20,593, due to the change of policy, should be disallowed at this time. It appears that the various companies will continue to have their offices at the same location or headquarters, under the management and supervision of the same personnel."

"Respondent, in assuming these additional operating expenses, is or may be relieving its less prosperous affiliated companies of their fair share of the cost of administering and conducting the general office which is now and has been occupied and operated during many years, for their mutual benefit. The resolution of respondent's Board of Directors is vague and indefinite as to the time when the change is to become effective, and we are of opinion that, until the change is actually consummated and its reasonableness demonstrated, the resulting increase in expenses should not be reflected in rates." (R. 34, 35).

The Court below was of opinion that this item should have been allowed because the evidence does not show it to be unreasonable and exorbitant, and stated that Commission rejection of it amounted to an attempt to



manage the company. We believe that a mere reading of the above quoted portion of the Commission order, bearing in mind the fact that the company has the burden of proof, will serve to demonstrate the Court's error.

The fifth item, in the amount of \$21,792 was properly disallowed and the company claim adjusted for the reasons stated in the Commission's order (R. 35). The Court below took no exception to this action of the Commission.

### 3. Allowance Claimed for Conjectural Loss of Business.

The company, in objecting to the Commission finding of allowable operating revenues, claimed that the Commission should have made an allowance in the amount of \$15,089 for the loss of such revenues as will result from the abandonment of railway service by York Railways Company (hereinafter referred to as Railways), an affiliate which purchases power from the company. The Court below held that this allowance should have been made and, as the sole reason therefor, stated (R. 1134):

"As we understand it, the abandonment is certain and is not denied."

At the time of the order in this case, although such abandonment was contemplated, Railways was in operation, and the Commission had no means of determining the certainty or the date of abandonment. At the time when the decision was rendered by the Court below, Railways was still operating, under the juris-

diction of the United States District Court for the Eastern District of Pennsylvania under the provisions of Section 77B of the Bankruptcy Act as amended. There is consequently nothing of record to support the Court's statement.

In addition to the absence of proof of actual abandonment, there is further support for Commission disallowance of this item. That is found in the fact that **the record contains no substantial evidence tending to show that loss would result from abandonment of service by Railways.** Company Exhibit No. 7 purports to show that the sale of power to Railways results in \$15,089 profit. (R. 1018) An analysis of the exhibit reveals the fallacy therein. The company shows that it purchased a total of 71,151,000 KWH in 1936 at a cost of .771 cents per KWH. It sold 4,232,300 KWH to Railways at .900 cents per KWH. Due to the size of its total purchase, the company was able to obtain a block price for 4,232,300 KWH at .610 cents per KWH. The company therefore concluded that the profit per KWH from the sale of power to Railways should be calculated as the difference between .900 cents and .610 cents rather than the difference between .900 cents and .771 cents. This is palpably erroneous. It is obvious that the company has no more right to claim that Railway's purchase is responsible for the lowest block price the company must pay for power than are the purchases of any of its other consumers. The correct method to employ in estimating the profit attributable to Railways purchases would have been for the company to deduct from the price of .900 cents per KWH paid by Railways the average

cost price of power to the company of .771 cents. If this had been done the company's apparent profit figure would be \$8,266.97 instead of \$15,089. This apparent profit of \$8,266.97 gives consideration to all of the elements set forth in company Exhibit No. 7, including maintenance of conversion equipment and corrective effect of Railway's load on system power factor.

The record further disclosed that the company renders its service to Railways over facilities used exclusively to serve the latter (R. 184). It is evident that, in estimating the company's cost of serving Railways, the carrying charges of these facilities must be included. As submitted in the testimony of the Commission engineering witness, H. Root Palmer, the annual carrying charge on these facilities is \$8,465.10 (R. 202, 203). Operating and maintenance expense and insurance costs on the facilities are also borne by appellee (R. 203). When these costs are considered the so-called profit is shown to be a loss.

In addition to the foregoing, we desire to point out that, since the sale of power by the company to Railways is a transaction between affiliates, it is subject to the closest scrutiny, and that before the Commission could find that such sale resulted in profit to the company it must have evidence of the most convincing character. This Court in *American Tel. & Tel. Co. v. United States*, 299 U. S. 232 said, concerning transactions between affiliates (p. 239):

"There is widespread belief that transfers between affiliates or subsidiaries complicate the task of rate making for regulatory commissions, and impede the search for truth. Buyer and seller

in such circumstances may not be dealing at arm's length, and the price agreed upon between them may be a poor criterion of value. *Dayton Power and Light Co. v. Public Utilities Comm'n of Ohio*, 292 U. S. 290, 295; *Western Distributing Co. v. Public Service Comm'n of Kansas*, 285 U. S. 119; *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133."

It is submitted that the evidence of the company in support of the allowance here in question is of the most dubious and unsatisfactory nature and, had the Commission made such allowance, it would have, in effect, given the company a bonus to which it is not entitled.

Since there is, neither proof of actual abandonment by Railways and consequent loss to the company, nor substantial proof of prospective abandonment and strong likelihood of loss, we earnestly represent that the holding of the Court below is wholly unsupported and palpably error.

#### 4. Taxes.

The company's estimated tax liability for the twelve months ended September 30, 1937, was in the amount of \$333,649, and the Commission in making its allowance of \$206,400 for taxes adjusted the former figure to conform with the \$435,000 reduction ordered in the company's gross annual revenues. The Court below made no finding as to the reasonableness of the Commission's allowance, but stated in its opinion:

"The other item in dispute grows out of the adjustment of taxes because of the reduction in

revenue of \$435,000 ordered by the commission. The original amount of taxes paid by the company was \$333,649 and the commission allowed a reduction of \$127,249 leaving a balance of \$206,400 to be paid by the company. The company, on the other hand, says that \$148,455 should have been allowed, leaving a balance of \$185,194 to be paid. It is not clear just how this difference of \$21,206 between them arose, but it does not have a decisive bearing on the case, for the reason that if the contention of the company is correct, it decreases the expense, increases the profit and the rate of return." (R. 1134, 1135)

The Court below erred in stating that the difference between the Commission and the company on the matter of taxes had no decisive bearing on the case. If the company's contention is correct, then it is clear that the company has been allowed \$21,206 more than it is entitled to on this account and this must be taken into consideration in determining whether the Commission order in the totality of its consequences is confiscatory. That the Court below failed utterly to consider this is apparent from its own words.

D.

#### Rate of Return.

The Commission, for temporary rate purposes, allowed the company a 6% rate of return. The Court below did not make a finding of fair rate of return, and did not disturb the Commission finding.

In the hearings before the Commission, the company evidence on rate of return consisted solely of the

testimony of T. E. Seelye. This witness stated that in his opinion  $7\frac{1}{2}$  per cent was a fair rate of return, and he explained that this figure was based on the customary 6 per cent allowance, to which was added  $1\frac{1}{2}$  per cent calculated to compensate the company for any loss which it might sustain in the event that its affiliate, York Railways Company, discontinued service. (R. 885, 886) Obviously a rate of return estimate based only upon these considerations is utterly worthless. Problematical loss or expense from abandonment by York Railways Company or other contingencies is admittedly a matter to be considered in connection with operating expenses, (R. 885) and cannot be considered in computing a reasonable rate of return. That the witness's  $7\frac{1}{2}$  per cent figure was not influenced by prevalent money rates or corporate earnings is undeniable, since he admitted that he made no studies on the subject. (R. 886)

At the hearing held before the Court below on January 17, 1938, the company offered as witnesses H. D. Boenning, an investment banker, and G. K. Knutson, a financial consultant, both of whom testified that in their judgment the company was entitled to an 8% rate of return. These estimates were based on studies of the company's balance sheets, its statement of earnings for the years 1935, 1936, 1937, and the various estimates of cost and revenue prepared by the company engineers. No investigation of conditions in the company territory was made. No statistical studies or examples whatsoever were given to support the witnesses' opinions. We submit that, since all of this testimony is based purely upon either speculation or upon information submitted by the company without



any semblance of independent checkup on the part of the witnesses, it has no probative value.

On the other hand, the Commission testimony on rate of return is of a very substantial character. We refer the Court to the testimony of R. A. McShea, Jr., Commission accounting expert (R. 966-977), relating to his exhaustive studies of money rates, yields on corporate securities, corporation earnings, etc. and to Commission Exhibits 32 to 36 inclusive (R. 1004-1013), which contain the details thereof. Mr. McShea stated (R. 851), that Commission Exhibit 32, sheets 1 and 2 (R. 1004, 1005) show generally that the trend of yields for all issues covered by the exhibit, which, incidentally, were reported by disinterested financial service organizations, were generally lower in the years 1934, 1935 and 1936 than at any time back to 1913. Likewise, the bond yields appearing on sheet 3 of Commission Exhibit No. 32 show that for 120 issues, including 40 public utility issues, rates of return were lower in 1935, 1936, and early 1937 than in the three years from 1932 to 1934 inclusive. Commission Exhibit 33 (R. 1007) shows the current yields on the securities of Pennsylvania Utilities; Commission Exhibit 34 (R. 1008) the yield on bonds and preferred stocks of Pennsylvania Electric Utilities; Commission Exhibit 35 (R. 1012) New York Money Rates; and Commission Exhibit 36 (R. 1013) corporation profits for 574 corporations selected at random. In addition, Mr. McShea testified (R. 972) as to the rates of interest paid on savings accounts in the City of York during the past ten years.

This Court has many times stated that rate of return is a matter for determination upon the individual factors of each specific case, and that no formula can be prescribed therefor. The controlling factors which must be considered by regulatory bodies in arriving at fair rate of return have been set forth in decisions so numerous that restatement of them here is unnecessary.

We submit that these factors have been carefully weighed by the Commission and that, under all the circumstances, considering the established character of the company's business, the prosperous community served, the company's financial stability as evidenced by its several decades of fabulous earnings (undiminished in depression years), and presently existing conditions respecting money rates and corporate yields, a rate of return of 6 per cent in this case cannot possibly be confiscatory.

We, therefore, submit that the findings of the Commission, relative to rate base, operating expenses, and rate of return, are reasonable and proper and fully supported by substantial competent evidence.

### CONCLUSION

In conclusion, the Commission urges that this Court rule:

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<sup>4</sup> Knoxville v. Knoxville Water Co. 212 U. S. 1, 17, 18; Willcox v. Consolidated Gas Co. 212 U. S. 19, 48-50; Bluefield Water Co. v. Pub. Serv. Comm. 262 U. S. 679, 692; Lindheimer v. Illinois Tel. Co. 292 U. S. 151, 175; Dayton Power & Light Co. v. Utilities Comm. 292 U. S. 290, 311, 312; United Railways v. West, 280 U. S. 234, 249, 250, 251; St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 72.

1. That temporary rates are desirable for effective rate regulation. It is constitutionally proper for a Commission, in the course of a rate investigation, to prescribe temporary rates pending full consideration of matters in substantial dispute.

2. That Section 310 of the Pennsylvania Public Utility Law is constitutional. It provides an adequate method for recoupment of loss, if any, while temporary rates are in effect, and thereby prevents confiscation. Furthermore, it does not restrict the Commission as to the elements of value it may consider, but authorizes the prescription of just and reasonable temporary rates, consistent with constitutional standards.

3. That rates affording a public utility a fair return upon the prudent original cost of its property used or useful in public service are not confiscatory.

4. That, on the entire record, the order of the Commission is just and reasonable. The Commission findings as to rate base, operating expenses, depreciation, and rate of return are reasonable, proper and supported by the evidence, and, therefore, the rates prescribed are not violative of constitutional prohibitions.

5. That the injunction restraining the enforcement of the Commission order was an unwarranted interference with the legislative process of rate making, and should be dissolved.

Respectfully submitted,

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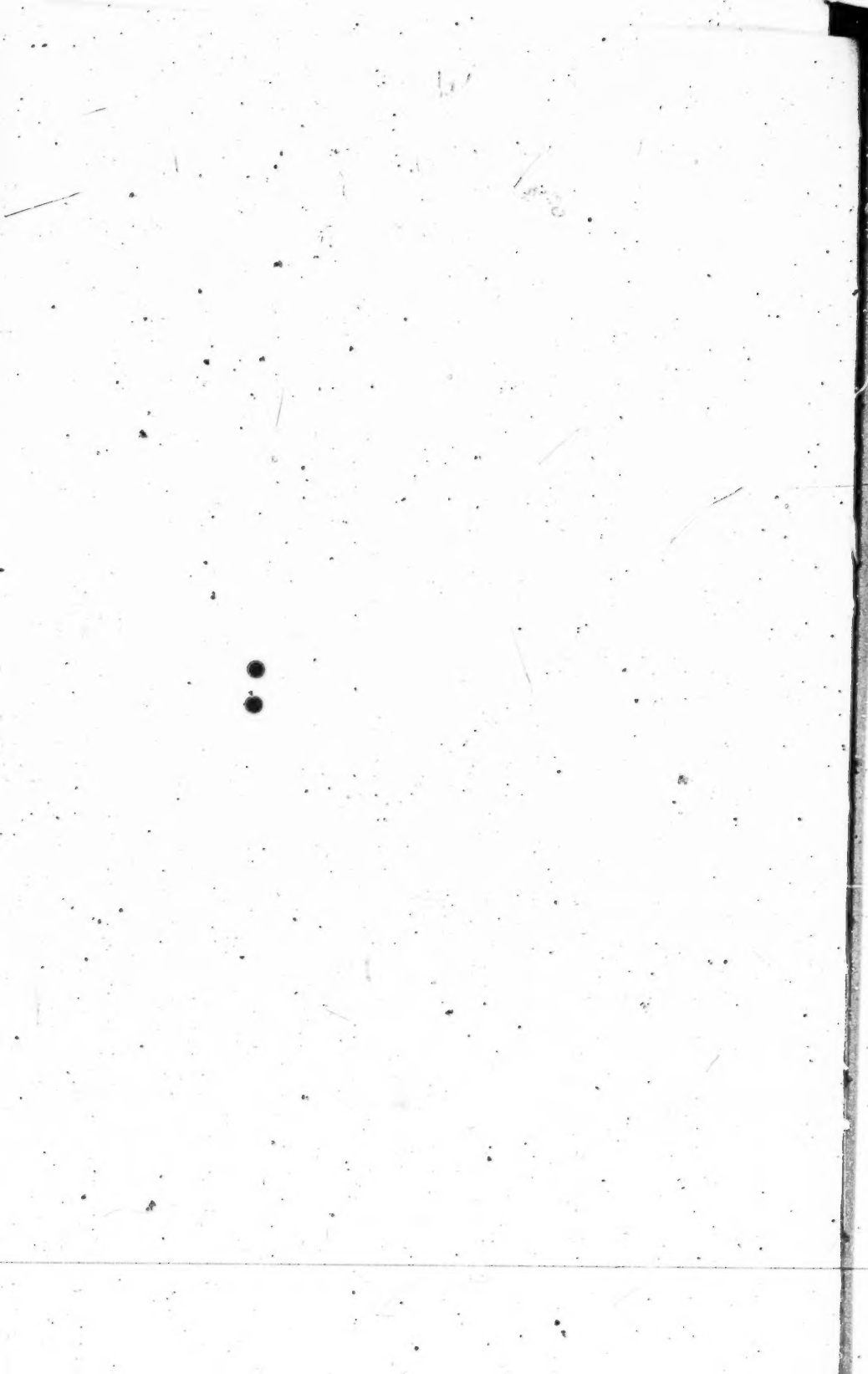
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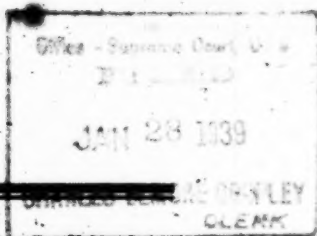


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# In The Supreme Court of The United States

October Term, 1938

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No. 509

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DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J.  
BEAMISH, and JOHN SULLIVAN, Individ-  
ually and Constituting PENNSYLVANIA PUB-  
LIC UTILITY COMMISSION, and UTILITY  
CONSUMERS LEAGUE OF YORK, PA.,  
Appellants,

v.

EDISON LIGHT & POWER COMPANY,  
Appellee.

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On Appeal from the District Court of the United  
States for the Eastern District of Pennsylvania

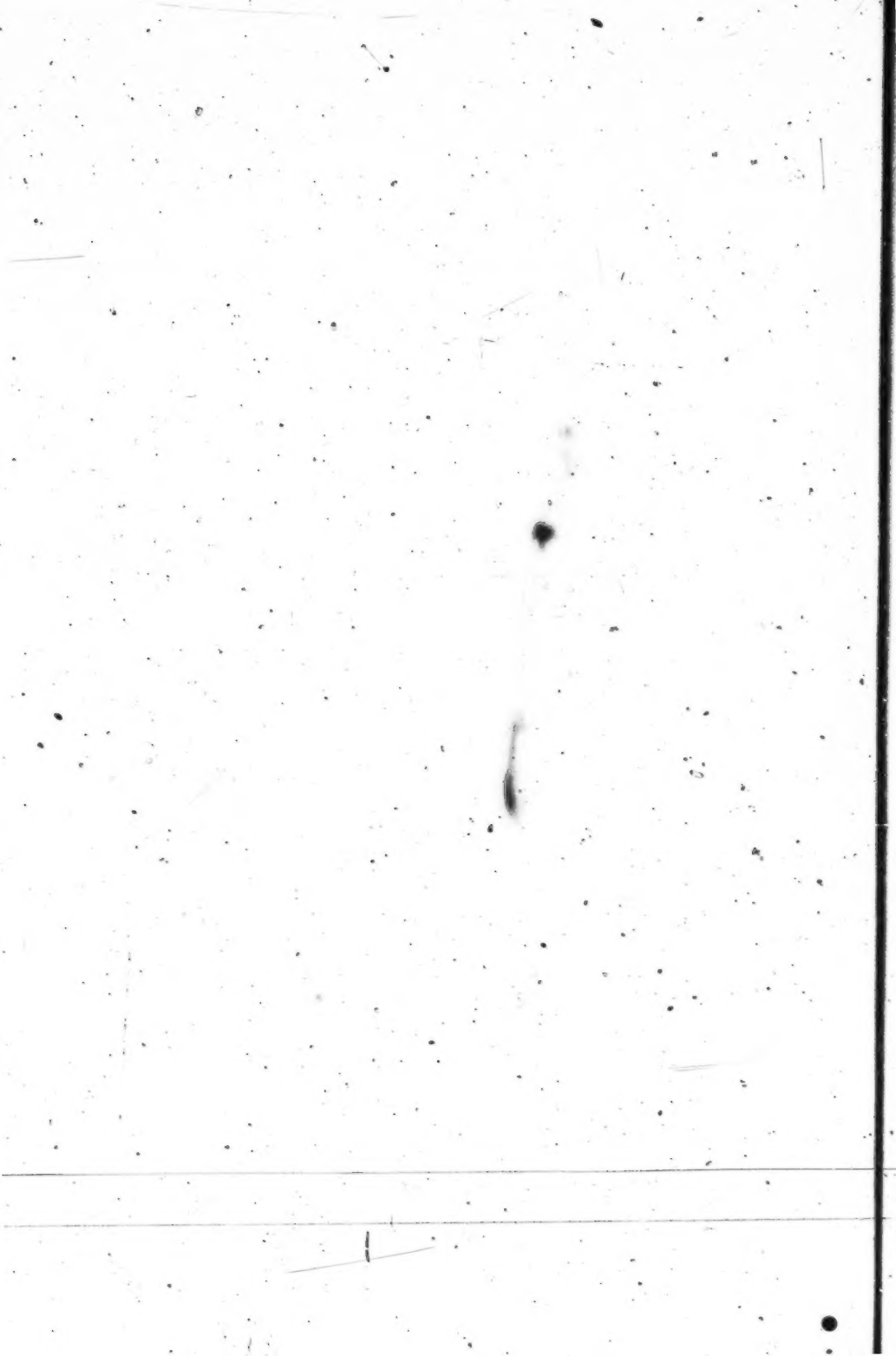
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BRIEF FOR UTILITY CONSUMERS' LEAGUE  
OF YORK, PENNSYLVANIA

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York, Pennsylvania.

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*Opinions Below*

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**BRIEF FOR UTILITY CONSUMERS' LEAGUE  
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---

## **OPINIONS BELOW**

The order of Pennsylvania Public Utility Commis-  
sion is reported in 17 Pennsylvania Public Utility  
Commission Reports 380, and in 21 Public Utility  
Reporter (New Series) 328. The opinion of the Dis-  
trict Court for the Eastern District of Pennsylvania  
is reported in 25 F. Supp. 192 (1938).

## CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Article XIV, Section 1, of the Amendments to the Federal Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 310 of the Pennsylvania Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated 1938 Supplement, Title 66, Section 1150) provides (omitting paragraph (d) which is not here in issue):

"Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public util-



ity, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

“(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions; Provided, That the commission, in determining the basis for temporary

4      *Constitutional Provision and Statute Involved.*

rates, may make such adjustments in the annual report data as may, in the judgment of the commission, be necessary and proper.      A

“(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

(d) \* \* \*

“(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed, under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which

would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

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**STATEMENT OF THE CASE**

Utility Consumers League of York, Pennsylvania, one of the appellants, is an unincorporated association of consumers of electric current in the City of York, Pennsylvania. Appellee is Edison Light & Power Company, a public utility engaged solely in intrastate commerce and rendering electric service to the public in the City of York and contiguous territory. Appellee serves approximately 30,000 customers. Edison Light & Power Company has no funded debt. All of its capital stock is owned by York Railways Company and is pledged as security for the funded debt of York Railways Company. The common stock of York Railways Company is wholly owned by NYPANJ, a holding company in the Associated Gas & Electric Company system.

On the 27th day of January, 1936, a Commission inquiry and investigation was instituted to determine the reasonableness of the rates of Edison Light & Power Company under the provisions of the then substantive regulatory law of the Commonwealth of Pennsylvania, 1913, P. L. 1374. Several hearings were held at which testimony was presented. During the progress of this case, the utility law of the Commonwealth of Pennsylvania was recodified, the Act of 1913, P. L. 1374, was repealed, and, in lieu thereof, the Legislature enacted the Public Utility Law of 1937, P. L. 1053. (Purdon's Pennsylvania Statutes Annotated, 1938 Supplement, Title 66, Section 1101).

Section 310 of the new Public Utility Law authorizes the Commission, during the pendency of a rate

case, to prescribe temporary rates, the effect of which rates must be considered by the Commission in prescribing final rates at the termination of the general rate proceeding. After notice of the intention on the part of the Commission to prescribe temporary rates, and after argument before the Commission, the Commission, on July 27, 1937, issued a temporary rate order against Edison Light & Power Company. The order directed the company to revise its tariff to effect a reduction of the gross annual revenues in the sum of \$435,000.

A bill in equity was filed by the company in the United States District Court for the Middle District of Pennsylvania. A temporary restraining order was issued by the Court, restraining the Commission from enforcing its order. The cause was heard before a three-judge court, as provided by Section 266 of the Judicial Code. Following the taking of testimony and argument, the Court, on October 15, 1937, permanently enjoined the order of the Commission. Each of the Judges who constituted the special court wrote an opinion in the matter. Two of the judges, Judge Johnson and Judge Watson, held that the temporary rate provisions of the Public Utility Law did not offend constitutional limitations, but that the order of the Commission failed to indicate the bases or the findings upon which the Commission prescribed its rate reductions. The opinion of Judge Davis agreed that the Commission had insufficiently indicated the bases of its order, but further held that the temporary rate provisions authorizing the fixing of rates based upon the original cost of the property of the company were unconstitutional, since they failed to take cognizance of the standards prescribed by the Court in the case of *Smyth v. Ames*,

169 U. S. 466, and cases following that decision. The opinions aforesaid are reported in 21 F. Supp. 1.

Following the decision of the Middle District Court, the Commission issued a supplemental temporary rate order in which it reviewed much of the record and set forth at length the bases for its findings. The company was again ordered to revise its tariffs to effect a reduction in the annual gross operating revenues in the sum of \$435,000. The Commission order (R. 15) gave consideration to the reproduction cost evidence, to the original cost evidence, and to the other matters of record. The order referred to the fact that it involved merely temporary rates, and reserved doubtful points for consideration in a final order.

The Commission found that, for the purpose of fixing temporary rates, the value of the company property was \$5,250,000. The order of the Commission indicates that it accepted almost entirely the operating expenses claimed by and experienced by the company, and allowed them for temporary rate purposes. The annual allowances for operating expenses, depreciation, and return of 6 per cent upon the aforesaid value of \$5,250,000 totaled \$1,697,829. The actual experience of the company showed annual gross operating revenues of \$2,202,329 for the 12-month period ending September 30, 1937, an excess of \$504,500 over the revenues found allowable. The Commission, however, prescribed temporary rates to effect a reduction of only \$435,000.

The company then filed a bill to enjoin the order of the Commission of November 30, 1937, aforesaid, in the United States District Court for the Eastern District of Pennsylvania (R. 4). The jurisdiction



of the Eastern District Court was predicated upon the fact that one of the Public Utility Commissioners resides within the Eastern District. A three-judge court was again constituted, under the provisions of Section 266 of the Judicial Code. A temporary injunction was issued. Testimony was taken and argument had before the three-judge court for the Eastern District on January 17, 1938, and, on October 14, 1938, the preliminary injunction was made permanent. The opinion of the Court (25 F. Supp. 192) was written by Judge Davis, who, following the opinion he had rendered sitting in the Middle District, held that the Act offended constitutional restrictions in that it failed to direct the Commission to consider the elements of fair value prescribed in **Smyth v. Ames**, (169 U. S. 466), and cases following that decision, and that the temporary rates would result in confiscation of the company property. It is from this order that this appeal has been taken.

**SPECIFICATION OF ERRORS TO BE URGED.**

The United States District Court for the Eastern District of Pennsylvania erred:

1. In holding that Section 310 of the Pennsylvania Public Utility Law is unconstitutional as contravening the Fourteenth Amendment.

2. In holding that the findings and conclusions of the Pennsylvania Public Utility Commission Order of November 30, 1937, are not supported by substantial record evidence.

3. In holding that Pennsylvania Public Utility Commission, in computing temporary rates, improperly disallowed certain operating expenses claimed by appellee.

4. In holding that the temporary rates fixed by Pennsylvania Public Utility Commission were confiscatory.

5. In failing to dismiss the bill of complaint for want of equity, and in failing to dissolve the temporary restraining order theretofore entered.

6. In entering its final decree of October 14, 1938, permanently enjoining enforcement of the temporary rates prescribed by Pennsylvania Public Utility Commission on November 30, 1937, cancelling appellee's injunction bond and imposing all costs on Pennsylvania Public Utility Commission and its members.

I

**SUMMARY OF ARGUMENT**

Section 310 of the Pennsylvania Public Utility Law is constitutional:

The question of constitutionality was raised in the case of **Edison Light & Power Co. v. Driscoll, et al.**, 21 F. Supp. 1. That case involved a prior temporary order of rate reduction by the present appellant against the present appellee. It involved the same questions as to the constitutionality of the Pennsylvania Utility Law (Sec. 310 (a)-(c)-(e)). Two of the three judges specially sitting as a Statutory Court under Section 266 of the Judicial Code in the United States District Court for the Middle District of Pennsylvania, specifically held the Act constitutional.

II

The appellee in the instant case has been afforded procedural due process. Before the present order of November 30, 1937, was issued, more than a dozen hearings were held. Testimony of appellee's witnesses and experts, as well as the testimony of witnesses and experts of the Public Service Commission, now the Pennsylvania Public Utility Commission, was taken. The order of November 30, 1937, sets forth with particularity the basis for the rate reduction made thereby.

## III

The recoupment provision of the Pennsylvania Public Utility Law affords the appellee substantive due process. When a State Law gives the utility the right to recoup if temporary rates are later found to have been too low, the question of confiscation cannot arise when the validity of a temporary rate is in issue.

The Pennsylvania Legislature recognized that a public utility corporation is entitled to a fair return upon its property. It therefore provided means by which this return may be guaranteed, namely, recoupment. If a temporary rate of return is fairly arrived at after notice and hearing, the utility should not be heard to complain, and this Court, or any other Court, should not be asked to probe into details as to how the temporary return was arrived at. It is to the advantage of the Courts, rate making bodies, utilities and consumers alike to establish the principle that temporary rates fixed fairly, honestly and not arbitrarily, are properly provided by the Legislature.

## IV

Upon all of the facts and the law, the injunction restraining the enforcement of the temporary rate order of the Commission should be dissolved.

**ARGUMENT****I****Section 310 of Article III of the Pennsylvania Public Utility Law Is Constitutional.**

On July 27, 1937, the Pennsylvania Public Utility Commission, appellant herein, issued a temporary order requiring the Edison Light and Power Co., appellee herein, to make a reduction of \$435,000.00 annual gross operating revenue. The appellee herein filed a bill of complaint (R. 4) to the said order in the Federal Statutory Court for the Middle District of Pennsylvania at Scranton. This court was composed of the Hon. J. Warren Davis, Circuit Judge, Hon. Albert L. Watson, District Judge, and the Hon. Albert W. Johnson, District Judge.

That bill of complaint involved identical parties complainant and identical parties respondent as are complainant and respondent in the instant case. The first complaint was based upon the same facts and raised the same questions of law with respect to the constitutionality of Section 310 Article III of the Pennsylvania Public Utility Law, as were raised by the appellee in the court below.

Pursuant to the bill of complaint filed before the aforementioned statutory court, the said Court, on October 15, 1937, to No. 1289 June Term, 1937, In Equity, filed separate opinions relative to the said matter, which opinions are reported in 21 F. Supp. 1.

By the opinion of Albert W. Johnson, D. J. (21 F. Supp 1) and the opinion of Albert L. Watson, D. J.

(21 F. Supp. 5) the Court there held Section 310 of Article III of the Pennsylvania Public Utility Law to be in compliance with the Constitution of the United States of America and the Fourteenth Amendment thereto.

The report and order now in question was merely a revision of the order before that Court. It was revised to comply with the majority opinion. For reasons known only to itself, the appellee did not complain to the court of original jurisdiction but to a Statutory Court for the Eastern District of Pennsylvania. The appellee raised the same questions of law in its bill of complaint before the Middle District Court as are raised here (R. 4). This court should not permit the decision of the Middle District to be set aside by a Court of similar status. To do so would be to allow a complainant to go from one statutory court to another so long as one of the parties resided in the district in question, or until a favorable decision was obtained.

This point of res adjudicata as to the constitutionality of the Pennsylvania Public Utility Law was raised by the interveners in their answer filed to the bill of complaint in the court below (R. 68). It was not answered by the court.

## II

**The Edison Light & Power Co. has been Afforded Procedural Due Process in the Instant Case.**

The Edison Light & Power Co. was given ample opportunity to be heard in hearings conducted by the Public Service Commission, and its successor, the Public Utility Commission.

On January 27, 1936, the Public Service Commis-



sion on its own motion began an investigation into the rates of the Edison Light & Power Co.

On October 28, 1936, the first hearings were held in the matter before Commissioner Stahlnecker, of the Pennsylvania Public Service Commission. A total of thirteen hearings were held during the next year. The final hearing was held on June 23, 1937. In fact, it may be noted, that at one stage of this litigation the appellee company felt that they had been afforded so much procedural due process that they opposed the imposition of the temporary rate on the ground that the commission should issue a permanent order, since all the facts were before it. (R. 996).

### III

**The Recoupment Provision of the Pennsylvania Public Utility Law, Section 310 (e), Affords the Appellee Substantive Due Process:**

#### A.

**A recoupment provision as to temporary rates removes confiscation as a factor to be reviewed by the courts of law.**

For years one of the most difficult problems of administrative government has been the honest and final determination of rate litigation by an administrative body acting on behalf of the legislature. It is a problem that has vexed legislative bodies and their administrative arms, the utility commissioners. It is one that has vexed the courts. So many are the factors that enter into the determination of a rate in almost every case; so variable are those factors as litigation proceeds, that a long time is consumed before a rate is finally placed in effect.

**The recoupment provision of the Pennsylvania**

Public Utility Law gives this Court an opportunity to relieve courts of law of the undesirable and unpopular task of determining whether a temporary rate is confiscatory.

This court has most recently set forth the test to be applied by the court in determining whether a utility is afforded the due process of law to which it is entitled under the Constitution of the United States, in **Railroad Commission v. Pacific Gas & Electric Co.**, 302 U. S. 388; 87 L. Ed. 327, 330.

"While a fair and open hearing must be accorded as an inexorable safeguard, we do not sit as an appellate board of revision but to enforce constitutional rights. **San Diego Land & Town Co. v. Jasper**, 189 U. S. 439, 446. When the rate-making agency of the State gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result, and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met, and the question that remains for this Court, or a lower federal court, is not as to the mere correctness of the method and reasoning adopted by the regulating agency but whether the rates it fixes will result in confiscation."

That the first of these factors has been complied with in the instant case is not seriously disputed. It is respectfully urged by counsel for the appellant that when a temporary rate order is attacked, and the rate-making agency of the State has given a fair hearing, received and considered the competent evidence that is offered, afforded opportunity through evidence and argument to challenge the result, and

made its determination upon evidence and not arbitrarily, the sole question that remains for this court or a lower court is whether the statute under which the temporary rate order was issued provides for re-ouppment in case the rates are later found to have been too low.

We respectfully submit that this court would be amply justified in finding as a matter of law that temporary rates fixed in accordance with the Pennsylvania Public Utility Act do not violate the Fourteenth Amendment to the Constitution of the United States.

The Pennsylvania Legislature of 1937 fully recognized that consumers have long been suffering from the delay occasioned by rate proceedings. It sought to provide a means whereby the consumers would be given immediate relief and at the same time the utility could be protected from the result of an honest error in judgment by the Commission in fixing a temporary rate lower than was later determined to be justifiable.

As was stated by Judge Johnson in **Edison Light & Power Co. v. Driscoll, et al., supra, page 4:**

"It was the evident purpose of the Pennsylvania Legislature, in passing this Act, to meet the criticism of the Prendergast case (*Prendergast v. New York Tel. Co.*, 262 U. S. 43), and to remove the burden placed upon the consuming public."

That Section 310 (e) affords the utility ample protection was the opinion of Judges Watson and Johnson in the case above referred to (21 F. Supp. 1, 4).

The purpose of a temporary rate is to force a public utility to give the consumer the benefit of reason-

able rates pending the proceedings to fix a final rate. These proceedings often last for years, and meanwhile, if no temporary rates are fixed, the public is required to pay unreasonable rates and the utilities are meanwhile permitted to make unreasonable profits:

Experience has shown that in the past the average time consumed by rate proceedings from their inception to their conclusion has been four years.

During the course of such litigation considerable expenses are incurred and the patience of the public and the consumers involved becomes exhausted. The result is that rate litigation has caused a wide-spread disrespect for democratic institutions by the people and has occasioned a hostile attitude toward utilities and toward the courts themselves. The instant case is a striking example of the evils sought to be remedied by the Pennsylvania Act.

On January 27, 1936, the Public Service Commission, predecessor to the Public Utility Commission, appellant herein, instituted, on its own motion, an investigation to determine the reasonableness of the rates and charges of the Edison Light & Power Company, appellee. Investigations were made and hearings held until June, 1937. On July 13, 1937, the Commission issued its first report and ordered a temporary rate reduction of \$435,000. On July 27, 1937, the Commission rescinded its prior order and issued a supplemental order making a like reduction. Since that time, by means of injunction, first in the District Court of the United States for the Middle District of Pennsylvania and later in the United States District Court for the Eastern District, which injunction is the subject of this appeal, the Edison Light & Power Co. has been successful in

preventing the consumers of York from having the advantage of a reduction in their rates to which it has been determined they are justly entitled by evidence produced before the rate making arm of the Legislature of the Commonwealth of Pennsylvania.

If a determination of this proceeding does not permit the temporary reduction ordered by the appellant, even more litigation must result before the consumers of the appellee receive a single cent of reduction in their rates.

### B.

**Temporary rates have many administrative advantages.**

There are numerous advantages of a temporary rate. Such a rate enables the public to receive a reduction in rates pending the determination of many intricate and variable problems involved in fixing the final and permanent rate. It provides the test tube in which by actual experience and practical use a rate based on theory can be definitely tested out. It eliminates the maze of formulas and the jungle of metaphysical concepts sometimes conceived, and often fostered, by the ingenuity of those who seek inflated valuations to support excessive rates.

The purpose and effect of the recoupment clause is to give the utility complete protection against any loss or confiscation resulting from temporary rates.

By this clause, if the temporary rate shall prove to be below the figure to which the utility is entitled, then when fixing the final and permanent rate, the rate making body is under the **legal duty** of fixing a rate which will enable the utility to recoup its loss. What can be fairer? By what method could the requirements of due process of law be better served?

The theory of monetary compensation for loss is the whole basis of the common law. It is the basis on which the person who is injured recovers damages for his injury. It is the basis upon which injuries are rectified and rights are sustained. It is not a new departure in the law to take property prior to paying for its taking. That theory has been applied under all systems of jurisprudence and is well known to us in the field of eminent domain, both in the taking by governmental agencies and the taking by private corporations. Even in equity where the basis is specific performance and specific remedy by use of injunction, the parties enjoined are protected by a bond which will return to him monetary damages if it shall be finally determined that the injunction was not proper.

It is not only the utility that is entitled to due process of law, but the public as well. If the property of the utility is confiscated by too low a rate, the property of the public is confiscated by too high a rate. The remedy that the public has where too high a rate has been imposed by a utility is reparation. The remedy given to the utility by the Pennsylvania Act where too low a rate has been established is recoupment. In both cases there is a temporary deprivation of property subject to later rectification by monetary compensation.

Surely, if reparation meets the constitutional requirements, temporary rates with recoupment provisions must also be constitutional. The whole apparent purpose of the Pennsylvania Act is that the temporary rate reduction ordered and the recoupment provision be taken together whenever the question of the propriety of the rate is in issue. If this is done the question of confiscation is removed entirely from a temporary rate proceeding and the courts are



relieved from the undesirable task of becoming a fact finding body in every rate case. The sole problem for the Court is whether or not procedural due process has been followed and the rate determined by the Commission has been applied after deliberation, and not capriciously or arbitrarily. To hold otherwise would be to destroy the very advantages that the Pennsylvania Legislature sought to give to the consumers and to the utility by its temporary rate provision with recoupment clause.

If a utility is permitted to continue to prolong rate proceedings by applying to the courts, even though a recoupment provision exists, the purpose for which a temporary rate statute was enacted is nullified.

## CONCLUSION

It is therefore respectfully urged by the Utility Consumers League of the City of York, York County, Pennsylvania, that your Honorable Court take the following action on this appeal:

- (a) Vacate the injunction issued by the United States District Court for the Eastern District of Pennsylvania, and direct that the Edison Light & Power Co. comply with the order of the Public Utility Commission issued November 30, 1937.
- (b) Find that the Pennsylvania Public Utility Law and especially Section 310 thereof is constitutional.
- (c) Find that the order of the Pennsylvania Public Utility Commission in the instant case affords the Edison Light & Power Co.

*Conclusion.*

due process of law under the Fourteenth Amendment of the Constitution of the United States of America.

- (d) Find that where as here (1) a temporary rate reduction is ordered after compliance with procedural due process, and (2) the Legislature has provided that the utility may recoup if it is determined the temporary rate has been too low, a utility against whom such a rate is issued may not be heard to complain that the rate is issued in violation of the Fourteenth Amendment to the Constitution of the United States of America.

All of which is respectfully submitted,

HERBERT B. COHEN,

Counsel, Utility Consumers  
League of York, Pennsylvania.





IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1938.

No. 509.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J. BEAM-  
ISH AND JOHN SULLIVAN, INDIVIDUALLY, AND AS  
THE PERSONS CONSTITUTING THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION,

AND

UTILITY CONSUMERS LEAGUE OF YORK, PA.,  
*Appellants,*

v.

EDISON LIGHT & POWER COMPANY,  
*Appellee.*

**APPELLEE'S BRIEF.**

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THE PERSONS CONSTITUTING THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION,

AND

UTILITY CONSUMERS LEAGUE OF YORK, PA.,  
*Appellants,*

v.

EDISON LIGHT & POWER COMPANY,  
*Appellee.*

---

**APPELLEE'S BRIEF.**

---

**HISTORY OF THE CASE.**

The Appellee is a public utility corporation organized under the laws of the Commonwealth of Pennsylvania and is now and for many years has been engaged in the business of generating, transmitting, distributing and selling electric energy in and about the

City of York in the Commonwealth of Pennsylvania. The Appellee was originally organized through the merger and consolidation of several public utility corporations, as a wholly owned subsidiary of York Railways Company, likewise a Pennsylvania public utility corporation engaged in operating certain traction properties in and about the City of York and its environs. York Railways Company has since that time owned and now owns all of the stock, as well as certain unsecured indebtedness, of the Appellee. All of these holdings are pledged as collateral security under an Indenture of Trust between York Railways Company and The Tradesmen's National Bank and Trust Company, pursuant to which the bonds of York Railways Company were issued. There were originally issued \$6,116,000.00 principal amount of these bonds, of which approximately \$5,000,000 principal amount are presently outstanding.

On January 27, 1936, the Pennsylvania Public Service Commission, the predecessor of the Appellants constituting the Pennsylvania Public Utility Commission (hereinafter sometimes referred to as the "Commission"), instituted on its own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates charged by the Appellee for the electric service rendered by it. Numerous hearings were held before the Public Service Commission and before the Appellants. During the course of these hearings the Appellee introduced complete and comprehensive testimony and exhibits in proof of (i) the fair value of the property devoted by it to the rendition of its public service, (ii) the fair return which the Appellee should be permitted to earn upon such fair value, and (iii) the reasonable and necessary allowances which



should be made for the operating expenses of the Appellee in determining the rates necessary to provide such a fair return. Testimony and exhibits were likewise introduced on behalf of the Public Service Commission and its successor, the Public Utility Commission. The entire proceeding was completed on June 23, 1937.

On that date, immediately following the conclusion of the final rate hearing, and pursuant to notice of June 15, 1937, a hearing was held to determine whether temporary rates should be prescribed. The entire record in the proceeding to fix permanent rates was incorporated as a part of the temporary rate proceeding. Oral argument was waived by the Appellee. At that time nothing remained to be done to conclude the proceeding except the filing of briefs if, as and when requested by the Commission. This situation has obtained since June 23, 1937, and *since that time the Commission has at all times had before it the evidence upon which it might fix, determine and prescribe final and permanent rates.*

Despite the fact that all evidence necessary to a determination of permanent rates was before the Commission on June 23, 1937, and despite the obvious lack of necessity for the prescription of temporary rates, the Commission made no effort whatever to fix and determine final and permanent rates. On the contrary, on July 13, 1937, the Commission entered an order directing the Appellee to file temporary rate schedules effecting a reduction in annual gross operating revenues of approximately \$435,000. On July 27, 1937, a second order was entered by the Commission which, by its express terms, rescinded the previous order of July 13th, but prescribed an identical temporary rate reduction of

approximately \$435,000 in gross operating revenues. The enforcement of this order and the rates which it prescribed was permanently enjoined by a statutory court convened in the Middle District of Pennsylvania by order dated October 15, 1937 (21 Fed. Supp. 1). No appeal was taken by the Commission from that decision.

Thereafter, on November 17, 1937, because of intervening changes in circumstances of the Appellee, additional evidence, designed to bring the evidence before the Commission up to date, was stipulated into the record. The Appellee waived its right to file briefs. *Once again the Commission was in possession of all of the evidence which it needed to fix, determine and prescribe final and permanent rates.* Nothing whatever remained to be done by the Commission except to consider the record before it and to prescribe permanent rates. This would not have been a very lengthy process. Indeed, as early as August 2, 1937, counsel for the Commission stated in open court before the statutory court convened in the Middle District of Pennsylvania that the Commission could fix permanent rates within a period of two-and-one-half-months. Moreover, it is manifest from a reading of the Commission's report and order that it considered the record before it in detail and without any additional effort could have made a final order fixing and determining permanent rates.

Notwithstanding these facts, the Commission made no effort to fix and determine final and permanent rates. Once again, on December 7, 1937, the Appellee was served with a copy of an order issued by the Commission dated November 30, 1937, prescribing temporary rates for the Appellee identical with those fixed and determined in

the previously enjoined order of the Commission dated July 27, 1937. This new order likewise effected a reduction of \$435,000 in the gross annual operating revenues of the Appellee. Thus for the third time the Commission entered an order prescribing temporary rates and effecting exactly the same reduction in revenues imposed in the two earlier orders. The reasons assigned in two of the opinions and orders (the first assigned none) were different, but the answer was the same in all three instances.

On December 14, 1937, the Appellee filed its bill of complaint in the United States District Court for the Eastern District of Pennsylvania to enjoin the Appellants' order of November 30, 1937. A statutory three-judge court was convened, pursuant to the provisions of Section 266 of the Judicial Code, as amended, and after due notice the matter came on for hearing on January 17, 1938, on the Appellee's motion for an interlocutory injunction. On February 15, 1938, it was stipulated by the parties that the matter be treated and decided by the court as an application for a permanent injunction. On October 10, 1938, the court below filed its opinion granting a permanent injunction restraining the Commission from enforcing the temporary rates prescribed in its order of November 30, 1937 (25 Fed. Supp. 192). A final decree in accordance with this opinion was entered on October 14, 1938, from which decree the Appellants now appeal.

The foregoing review abundantly demonstrates that the present case is not one where a temporary rate order was required in the public interest or necessary for the purpose of protecting consumers during the pendency of

a long and involved rate proceeding. The proceeding itself was concluded before the entry of the first temporary rate order, since which time two additional temporary rate orders have been imposed. And this despite the fact that counsel for the Commission stated in open court on August 2, 1937 that a final determination of rates could be made within *two-and-one-half months*, or by the middle of October, 1937.

At the present time, over a year-and-one-half has elapsed since the conclusion of testimony on June 23, 1937. Nearly a year-and-one-half has elapsed since counsel for the Commission stated that a final determination could be made within two-and-one-half-months. Well over a year has elapsed since the Commission was permanently enjoined from enforcing its second temporary order prescribing rates identical to those now attempted to be enforced. Clearly, then, we are not faced with a practical situation involving the necessity of balancing the interest of consumers and investors. *We are, however, directly faced with the converse and equally practical question, namely, whether the Commission can, under the cloak of a so-called temporary rate statute, completely disregard its duty to prescribe final and permanent rates and succeed in enforcing so-called temporary rates upon which no time limit has been placed, regardless of the effect of such rates upon the operations of the Appellee and of the legality of the methods employed by the Commission in arriving at its conclusion.*

### STATEMENT OF FACTS.

The Commission's Order of November 30, 1937 is a supplemental temporary rate order (R. 15-39). In it the Commission reviews the record before it, sets forth certain findings, and comes to certain conclusions concerning (i) the rate base of the Appellee, (ii) the allowable rate of return, and (iii) the operating expenses which should be allowed in determining the gross revenues to which the Appellee is entitled. In this order the Commission found that the reproduction cost new of the Appellee's property as of the date of the order was \$5,293,664.00, that the depreciated reproduction cost was \$4,737,803.00, (R. 28) that the original cost was \$4,576,169.73, and that the depreciated original cost was \$4,094,000.00 (R. 29). The Commission found that a reasonable allowance for working capital was \$164,000.00.

On the basis of these findings, and without making any specific allowance for going concern value, the Commission found that, for the purpose of fixing temporary rates, the value of the Appellee's property was \$5,250,000.00. To this rate base the Commission applied an arbitrary rate of return of 6%.

The Commission in its paid order considered the operating expenses of the Appellee and disallowed for rate making purposes (1) rate case expense actually incurred in the amount of \$178,374.50, (2) salary expense actually to be incurred in the amount of \$20,593.00 and (3) a loss in net operating revenues in the amount of \$15,000 which would, by reason of the discontinuance of the trolley operations of York Railways Company, necessarily result.

The Commission reached the conclusion that the annual allowances for operating expenses, depreciation

and a return of 6% upon \$5,250,000.00 totaled \$1,697,829.00, and prescribed temporary rates to effect a reduction of \$435,000.00 in gross operating revenues.

The foregoing findings and conclusions of the Commission purport to be based on the evidence introduced into evidence by the Appellee and the Commission.

At the hearings before the Public Service Commission, the Appellee, in order to present to the Commission and its predecessor a complete and accurate basis for determining the fair value of the property devoted by it to the rendition of its public service, retained Day & Zimmermann, Inc., internationally known public utility engineers and consultants, to make estimates of the reproduction cost new, depreciated reproduction cost, and original cost of such property, and to determine its fair value.

The estimates of reproduction cost and original cost of the Appellee's property, introduced in evidence before the Commission (Appellee's Exhibits 9 and 18 R. 1021, 1030), were made under the personal direction of Mr. Theodore E. Seelye, vice president of Day & Zimmermann, Inc. His testimony before the Commission not only fully qualified him as an expert engineer but one completely conversant with the problems of appraising, constructing and operating public utility properties. His qualifications were conceded by counsel to the Commission.

The analysis of the business, properties and affairs of the Appellee and its affiliated corporations which was necessary in order to complete the investigation required by the Commission and its predecessor covered



a period of approximately eight months, and required the services of a considerable number of members of the staff of Day & Zimmermann, Inc.

### **Reproduction Cost.**

Appellee's reproduction cost estimate analyzes in detail the property and general overhead accounts, and the means by which the reproduction cost new of its property used and useful in the public service as of November 30, 1936, was estimated at \$5,572,134 (R. 629). It also indicated such reproduction cost less accrued depreciation as \$4,950,609 (R. 629).

In arriving at these figures, a complete inventory of Appellee's property was made by a physical examination and count in the field of the actual units of property in place, which were then classified in accordance with the appropriate account numbers or classifications designated by the Uniform Classification of Accounts prescribed by the Commission. The present construction cost of the physical property was estimated by obtaining actual quotations from manufacturers of and dealers in the materials required to construct the property set forth in the aforementioned inventory, and by adopting the prevailing rates paid to labor in the City of York of the required character or degree of skill. Quotations from manufacturers and dealers were based upon actual competitive prevailing market prices, and reflected any discount to which the Appellee would be entitled for purchasing in quantity amounts (R. 492-493, 504-512, 517-527, 544-548).

Subsequently the estimates of reproduction cost new and depreciated were translated into prices prevailing on or about June 1, 1937, to show the extent to which the original estimates had been affected by actual rising

prices between November 30, 1936, and a date more nearly coincident with the termination of the rate proceedings. The estimate of reproduction cost new, as of June 1, 1937, was \$6,019,832, and depreciated reproduction cost approximately \$5,350,000 (Appellee's Exhibit 18, R. 911).

All of the foregoing estimates were based upon an inventory of the Appellee's property as of November 30, 1936. It was stipulated of record that the net additions to its property from November 30, 1936, to September 30, 1937, totalled \$142,851.07 (Appellee's Exhibit 22, R. 1037-1038).

Depreciation was determined by personal inspection of the various units of property by a number of expert engineers who considered, among other things, the physical condition of the units, the approximate dates of installation, the manner in which the units had been maintained, the degree of obsolescence, and the adequacy or inadequacy of each particular unit (R. 496-497).

The Commission introduced no substantial evidence of reproduction cost. *The only engineer who testified for the Commission in connection with reproduction cost admitted that he had made no physical inspection of the Appellee's property and that he had not formed an independent judgment as to the reproduction cost, new or depreciated, of such property (R. 457, 958).*

Certain exhibits were offered on behalf of the Commission purporting to be estimates of the reproduction cost, new and depreciated, of the Appellee's property (Commission's Exhibit 17 Revised and 21 Revised, R. 990A, 989).

The Commission offered its Exhibit 21 Revised (R. 990A) which was based entirely upon the Appellee's

reproduction cost appraisal as of November 30, 1936, adjusted to exclude certain property of the Appellee and to reduce the general overhead accounts.

Appellee's witness Seelye testified that, in fixing an allowance for general overheads, he made an actual inventory and appraisal of the physical property of Appellee, including an investigation and study in the field of all the elements necessary to arrive at a mature and deliberate judgment (R. 551-566).

Commission's witness Bierman testified **that he had not made a physical examination or inspection of Appellee's property, that he had not formed an independent judgment of its reproduction cost new**; that he had accepted Appellee's appraisal as to direct cost of its property and had made certain adjustments in overheads (R. 457, 959).

The Commission introduced *no evidence whatsoever* as to the reproduction cost of Appellee's property as of June 1, 1937 and *no independent evidence* of the reproduction cost of such property as of any other date.

#### **Original Cost.**

Appellee's Exhibit 9, before the Commission, classified by property accounts in a form similar to that of the reproduction cost estimate, contains an estimate of the original cost of Appellee's property used and useful in its public service as of November 30, 1936, in the sum of \$4,969,000 (R. 791). Net additions to September 30, 1937 increase this estimate to \$5,111,851.07 (R. 1037, 1038).

In determining the foregoing estimate of original cost, the actual costs of materials and labor to Appellee or its predecessors, as of the respective dates of installation or construction were adopted, and these costs were ap-

plied to the aforementioned inventory as of November 30, 1936. In cases where the books of the Appellee failed to disclose actual cost, prevailing prices of materials as of the dates of installation or construction, and prevailing costs of labor in York, Pennsylvania, as of such dates, were applied (R. 632-637).

Commission's Exhibits 23, 26 and 27 purported to show the original cost of respondent's property as \$4,382,647 (R. 990, 994, 998). With respect to the sources of these exhibits, the Commission's witness, McShea, testified (R. 402-413) that from one-third or one-fourth of the information respecting the property described in his purported estimate of original cost was obtained from capital stock tax returns of predecessor companies of the Appellee and the books of such predecessor companies containing entries made prior to the year 1913; that he had not considered certain items appearing on the books of such predecessor companies; that a large part of the property referred to in such purported estimate was no longer in existence; that such purported estimate did not take into consideration the property of the Appellee now used and useful in the public service; that no consideration was given to the net additions of approximately \$70,000 from November 30, 1936, to June 30, 1937; that such purported estimate was made without regard to whether the property therein referred to was devoted to the rendition of the Appellee's public service; that some of his estimates were judgment figures; *and that he had no way of knowing whether the figures contained in the tax returns and books of predecessor companies of Appellee were recorded thereon at original cost or not.*

In its order complained of, dated November 30, 1937, the Commission made adjustments to include net addi-

tions and construction work in progress during 1936 and arrived at a figure of \$4,576,169.73 as the original cost of Appellee's property as of December 31, 1936 (R. 21). It introduced no evidence whatsoever of the original cost of Appellee's used and useful property constructed between Dec. 31, 1936 and June 1, 1937.

### **Working Capital.**

In the Commission's report and order, it determined that a fair allowance for working capital was \$164,000 in which Appellee concurs (R. 28).

### **Going Concern Value.**

A careful estimate of going concern value was made by Appellee. Witness Seelye testified that this value, based on a consideration of the relevant factors, was not less than \$400,000 (R. 796). All the pertinent facts and circumstances in the financial history of the Appellee were considered in arriving at this figure. **The Commission offered no testimony as to going concern value.** In its order of November 30, 1937, the Commission failed to make a separate allowance for going concern value, stating that it had nevertheless considered it in arriving at fair value (R. 24-27). No evidence of such consideration is apparent.

### **Rate of Return.**

*The Commission offered no evidence dealing directly with fair rate of return nor did it attempt to contradict Appellee's evidence with respect thereto.*

Commission's witness McShea introduced into evidence and testified from exhibits prepared by him relative to. (i) bond yields and prices of Pennsylvania electric utilities, (ii) prices and yields of preferred stock of Penn-

sylvania public utilities, (iii) New York money rates from January, 1932 to April, 1937, and (iv) earnings on common stocks according to ratios of earnings to high market prices. (R. 1007, 1008, 1012, 1013). This witness, whose qualifications as an expert in matters of utility finance and financing were challenged by Appellee and were not established by his testimony, stated that he had no information as to what it would cost Appellee to attract capital; that he had no opinion as to what Appellee would have to pay for money under the existing circumstances; and that he had made no study of the trend of the present utility bond market (R. 978-984).

Appellee introduced the testimony of witness Henry D. Boenning, a banker and broker experienced in the underwriting and public sale of utility securities (R. 1042-1068). He testified that he was familiar with the business and affairs of the Appellee, that he had studied its balance sheets and knew its earnings for 1935, 1936 and 1937; that he had made inquiry and investigation of the cost of financing Appellee; that he was ready, willing and able to finance Appellee on the following basis, which was the lowest possible basis on which Appellee could be financed through public participation: \$5,500,000 (**minimum** fair value claimed by Appellee (R. 800)) through the issuance of (1) \$3,100,000 of 20 year 5% bonds to net the company \$97 on each \$100 bond, or a total of \$3,007,000; (2) \$1,350,000 through the sale of 27,000 shares of \$3.50 preferred, par \$50, to net the company \$1,218,375; (3) 100,000 shares of common stock, par \$10, to net the company \$1,275,000 (R. 1053). In order to meet its fixed charges and insure the sale of its securities, the company would have to earn at least 7.88% on this minimum fair value, or \$432,650 (R. 1051-



1053); \$155,000 for bond interest, \$94,500 for preferred stock dividends, \$178,500 for common stock and \$4,650 for amortization of bond discount (R. 1053).

A similar statement on the basis of financing \$5,250,000 (Commission's rate base) indicated a minimum rate of return of 7.8%, or \$409,300, to meet its fixed charges and insure the sale of its securities (R. 1054). Mr. Boenning cited in support of his testimony public utility bonds and stocks, including those of Pennsylvania companies, which were then selling in the open market on a basis comparable to that outlined by him (R. 1046-1051).

His testimony was corroborated by Appellee's witness, Knutson, utility financial and operating consultant, who, after stating his familiarity with the property and business of the Appellee and its earning statements for 1935, 1936 and 1937, testified that a rate of return of at least 8% was necessary if Appellee was to maintain its high grade of service to the public, preserve its credit and be able to attract capital at a reasonable cost (R. 1071). Both of these witnesses testified that the activities, agencies and attitude of the federal and Pennsylvania governmental administrations had increased the cost of money to public utilities by frightening the investor, and that the rate-making powers conferred upon the Pennsylvania Public Utility Commission by Section 310 of the Public Utility Law and statements attributed to members of the Commission weakened the ability of Pennsylvania utilities to attract capital and raised the cost of the same (R. 1056, 1072-1080).

#### **Operating Expenses.**

The **uncontradicted** evidence before the Commission shows that the Appellee incurred rate case expense in

the presentation of evidence before the Commission and in matters growing out of the investigation which the Commission instituted on its own motion, in the amount of \$178,374.50 (R. 1037).

No attempt has been made by the Commission, through the introduction of evidence or otherwise, to deny the fact that these expenses have actually been incurred or that they are proper and reasonable and necessarily incident to the investigation instituted by it.

A resolution of Appellee's board of directors adopted on October 28, 1937, increasing the annual salary expense of Appellee in the amount of \$20,593.00 was, by stipulation, made a part of the record in the rate proceeding (R. 1035).

The record shows that heretofore the Appellee has derived an annual profit of \$15,000 from sales of electric energy to York Railways Company, which will disappear with the abandonment of its railway services. (Appellee Exhibit No. 7, R. 1018).

### **Continuing Property Records.**

E. C. Isele, vice president of the Appellee, testified that Appellee did not keep continuing property records (R. 1106). He also stated that during the twelve months' period ending December 31, 1937, the company had made 5,671 service connections, and 4,704 service disconnections (R. 1108); that the operating income of Appellee for the calendar year 1935 was \$612,602.20 and for the calendar year 1936, \$568,711.93 and for the 12 months ending September 30, 1937, \$606,921.05 (R. 1106, 1031). These figures are each greatly in excess of the net operating income allowed by the Commission in its order dated November 30, 1937.

### **QUESTIONS INVOLVED.**

(1) Does the order of the Commission ignore the statutory requirements of Section 310 of the Pennsylvania Public Utility Law?

(2) Does Section 310 of the Pennsylvania Public Utility Law contravene the provisions of the Constitution of the United States and the Fourteenth Amendment thereto and the Constitution of the Commonwealth of Pennsylvania?

(3) Does the order of the Commission violate the Provisions of the Constitution of the United States and the Fourteenth Amendment thereto?

### **OUTLINE OF THE ARGUMENT.**

The infirmities of the statute and of the Commission's order made pursuant thereto are briefly stated in the following outline of argument.

I. The order complained of is invalid because the Commission failed to comply with the specific provisions of Section 310 of the Pennsylvania Public Utility Law. The Commission affirmatively states that in making its order of November 30, 1937, it proceeded under subparagraph (a) of Section 310. Subparagraph (b) of Section 310 is specifically and exclusively applicable to cases where the utility corporation does not have continuing property records. The evidence in this case is uncontradicted that the Appellee does not have continuing property records. The evidence is likewise uncontradicted that the allowable return to the Appellee under the specific provisions of subparagraph (b) of Section 310 is far in excess of the return permitted by the Commission's order.

II. Section 310 of the Pennsylvania Public Utility Law violates the provisions of the Fourteenth Amendment to the Federal Constitution and the Constitution of the Commonwealth of Pennsylvania, and is therefore invalid.

A. Subparagraph (a) of Section 310 permits the Commission in its uncontrolled discretion to deprive a utility corporation of the essential requirements of due process of law in two respects:

1. It permits the prescription of temporary rates as low as 5% on depreciated original cost of the physical property—i. e. the cost when first devoted to the public use. It thus permits the exclusion from the temporary rate base so determined of allowances for all indirect costs or "general overheads", working capital and going concern value, as well as the exclusion from consideration of reproduction cost and other essential elements of fair value. It permits the wholly unwarranted practice of depreciating original cost. It permits the imposition of an arbitrary rate of return of 5%, without any consideration of the special circumstances affecting any given utility corporation. Subparagraph (a) permits the Commission to prescribe rates by the use of illegal methods, and to disregard relevant evidence of fair value and fair return and to make findings without regard to the evidence of such fair value or fair return. Thus this subdivision permits the Commission to effect a denial of due process of law in the procedural sense.
2. It permits the Commission to prescribe rates yielding a return as low as 5% on depreciated original cost of the physical property, when first devoted to public use thus allowing the Commission to fix rates which in most, if not all, cases

will be confiscatory. It does not require that rates be sufficient to yield a fair return on the fair value of the utility corporation's property used and useful in the public service. Whether or not the rate to be fixed in a given case will yield a fair return on the fair value of the property, or on the contrary, will be confiscatory, is completely within the purported power of the Commission. Thus it permits the Commission to effect a denial of due process of law in the substantive sense.

The very existence of the power to deprive utilities of their property without due process of law, regardless of its exercise, is invalid. The statute must be judged by what it *permits*, and so judged it constitutes:

1. A delegation of unlawful power, since the legislature itself could not prescribe arbitrary rates based solely on 5% of depreciated original cost of physical property when first devoted to public use, and hence cannot delegate to the Commission a power which it does not possess, and
2. An unlawful delegation of power, since the statute contains no standard or framework to guide and limit the exercise of administrative discretion.

B. Subparagraph (b) of Section 310, which provides for a return measured solely by previous net operating income for a year selected by the Commission, wholly without regard to what constitutes a fair return on the fair value of the utility corporation's property, is equally as invalid as subparagraph (a) and for the same reasons.

C. The alternative bases for the prescription of rates provided for in subparagraph (a) and (b) of Section 310, the application of which is to be determined solely

by the mere accident of bookkeeping methods followed by a particular utility, deny to the utility corporations of the Commonwealth of Pennsylvania the equal protection of the laws. There can be no sound distinction based solely upon the keeping of, or the failure to keep, continuing property records which justifies such discrimination.

D. Subparagraphs (a) and (b) of Section 310 are not validated by the so-called "recoupment" provision of subparagraph (e). The Constitution makes no distinction between permanent and temporary confiscation; nor is there any degree of confiscation which is permissible under the Constitution. It is, therefore, impossible to avoid the unconstitutional effect of a confiscatory or otherwise illegal rate by a recoupment provision.

Even if this were theoretically possible, it is not accomplished by subparagraph (e) because the loss caused by confiscatory rates cannot be compensated for merely by fixing rates in the future in excess of legal requirements, since this method does not guarantee any recoupment; the recoupment provision of subparagraph (e) is certain neither as to time nor amount; the recoupment provision of subparagraph (e) does not provide for all of the possible elements of damage resulting from the imposition of confiscatory temporary rates.

III. The order of the Commission violates the Federal Constitution in that it denies to the Appellee the requirements of due process of law and just compensation for the taking of its property.

A. The findings and conclusions of the Commission are not supported by substantial evidence.



B. The rates imposed by the Commission's order are confiscatory in that they do not provide the Appellee with a fair return on the fair value of its property used and useful in the public service.

## ARGUMENT.

### POINT I.

**THE COMMISSION'S ORDER OF NOVEMBER 30, 1937, IS INVALID BECAUSE IT FAILS TO COMPLY WITH THE MANDATORY PROVISIONS OF SECTION 310\* OF THE PENNSYLVANIA PUBLIC UTILITY LAW:**

The Court below found, and the Commission admits, that in imposing temporary rates upon Appellee, the Commission acted under subparagraph (a) of section 310 of the Pennsylvania Public Utility Law. The Court below likewise found that, *if the Commission had any right to impose temporary rates at all*, it should have proceeded under subparagraph (b) of section 310.

It appears of record by the uncontradicted testimony of E. C. Isele, Vice-President of Appellee in charge of its accounting records (R. 1106), that Appellee does not have continuing property records such as the Commission may require under Section 502\* of the Pennsylvania Public Utility Law, or continuing property records of any kind. Such records are, in effect, a perpetual inventory of a utility, stated on the basis of original cost. The method for fixing the rates of a public utility which does not have such continuing property records is prescribed in Section 310 (b), which provides in part:

\* Printed in full in Appendix A hereof.

“(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which *shall be sufficient to provide a return of not less than\** an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. \* \* \*”

The Commission argues in its brief, in an effort to avoid the finding of the Court below and the plain force of the statute, that subparagraph (b) provides merely an alternative permissive procedure for the prescription of temporary rates. However, it is submitted that this subparagraph is clearly **mandatory** to the extent that it requires the Commission, if it proposes to fix temporary rates for a utility which does not have continuing property records, to establish rates sufficient to provide a return of not less than the operating income of the utility for the year 1935 or any subsequent year.

The only permissive word in the statute is the word “may.” But it is clear that this permissive word de-

\* Emphasis in quotations throughout, ours, unless otherwise indicated.

notes merely the general permission granted to the Commission to fix or not to fix temporary rates as the Commission may desire. If the Commission makes use of this permissive power it "**shall**" adopt the method, and meet the test, provided in the appropriate subparagraph of Section 310.

Each subparagraph thereof provides that the Commission "**may**" fix rates. Thus subparagraph (a) provides that the Commission "**may**" fix temporary rates which "**shall**" be sufficient to provide a return of "not less than" 5% of depreciated original cost of the physical property when first devoted to public use of the utility. Subparagraph (c) provides that the Commission "**may**", prescribe temporary rates at intervals in the manner provided in subparagraphs (a) or (b). Subparagraph (d) provides that the Commission "**may**" prescribe trial rates which "**will produce**" a fair return on fair value. Subparagraph (b) provides, that where a utility does not have continuing property records, the Commission "**may**" establish temporary rates which shall be computed upon the basis therein provided. Manifestly the word "**may**" is used in the same sense in each subparagraph and refers only to the general discretion granted to the Commission to fix or not to fix temporary or trial rates. In each subparagraph the method by which such rates shall be fixed is mandatory.

The authority to prescribe temporary rates under subparagraph (b) is *permissive*, but if the utility does not have continuing property records, it is *mandatory* that the temporary rates so prescribed "**shall** be sufficient to provide a return of not less than" the operating income of the utility for the year 1935 or for any subsequent year.

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The mandatory words "shall" and "not less than" would be meaningless if the generally permissive word "may" were held to control them. Such a construction would be a clear violation of express language.

Moreover, such a construction would be a clear violation of the intent and purpose of Section 310. It was presumably designed to provide a reasonably simple and expeditious method of effecting a reduction in rates pending the determination of proceedings to fix permanent rates. This purpose can be accomplished by the use of original cost as a rate base only where the records of the utility furnish a quick and certain guide to that cost. Where they do not, it is obvious that a determination of original cost must be either a mere guess or the result of a lengthy and involved investigation and determination of fair value. It is for this reason that the Legislature of Pennsylvania, instead of merely empowering the Commission to prescribe temporary rates, attempted to fix two separate and distinct methods to be used by the Commission, as a part of a long range program designed to facilitate the speedy prescription of temporary rates. Where the utility has continuing property records in the form prescribed by the Commission, subparagraph (a) may be utilized, for such records supply original cost data in the Commission's prescribed form, and rates based on or tested by original cost, as they are under subparagraph (a), may readily be determined. But where such records are not available a different method must be employed. This method is set forth in detail in subparagraph (b), and supplies a short-cut control of rates where there are no original cost records in the Commission's prescribed form. The two methods together provide a comprehensive scheme of regulation.

The Commission's failure to act under subparagraph (b) of Section 310 as the statute required it, has resulted in the imposition of temporary rates on Appellee, calculated to yield a net return of \$384,000. It is unquestioned on the record that its net operating income for 1935 or any subsequent year, the measure of rates under subparagraph (b), was never less than \$568,000. Thus the Commission has ordered a reduction in gross operating revenues which, according to the Commission's own figures, will result in a net operating income of far less than that of any of the three years which the Commission is authorized by Section 310 (b) to use in imposing its temporary order.

This illustrates conclusively the degree to which the finding of the Commission as to the allowable net income fails to conform with the mandatory provisions of the statute under which the Commission acted in fixing temporary rates. The Commission has made no attempt to comply with the law under which it derives its authority.

It is submitted that for this reason alone the action of the Commission and the imposition of temporary rates prescribed in its order of November 30, 1937, are invalid and without statutory authority, that the statutory Court's finding in this regard is correct, and that the permanent injunction against the enforcement of those rates was properly issued.



## POINT II.

**SECTION 310 OF THE PENNSYLVANIA PUBLIC UTILITY LAW VIOLATES BOTH THE FEDERAL CONSTITUTION AND THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA,\* AND THE ORDER OF THE COMMISSION, IMPOSED UNDER THAT SECTION, IS INVALID.**

Section 310 permits the Commission in any proceeding involving rates brought either on its own motion or on complaint, if it be of the opinion that the public interest so requires, immediately to fix and prescribe temporary rates.

As shown in Point I, two bases or measures are provided for the prescription of such temporary rates; the application of which is dependent upon the existence or non-existence of continuing property records of the particular utility involved. If the utility has such records, and the Commission elects to impose temporary rates, the rate may be as low as 5% of the original cost less accrued depreciation of the physical property of the utility when first devoted to public use (Subparagraph (a)). If it has no such records, and the Commission elects to impose temporary rates, the rate may be as low as the operating income of the utility for the year 1935 or any subsequent year selected by the Commission, based upon annual report data plus or minus net changes in the physical property of the utility adjusted by the Commis-

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\* Each of the subparagraphs of Section 310 is demonstrably unconstitutional. However, inasmuch as the present order of the Commission requires consideration only of subparagraphs (a), (b) and (e), the Appellee will confine its discussion and analysis to these specific subparagraphs.

sion as it deems fit (Subparagraph (b)). *Both bases ignore consideration of the present fair value of the utility's used and useful property.*

### A.

SUBPARAGRAPH (A) OF SECTION 310 IS UNCONSTITUTIONAL BECAUSE IT PERMITS THE COMMISSION IN ITS UNCONTROLLED DISCRETION TO DEPRIVE A UTILITY COMPANY OF THE ESSENTIAL REQUIREMENTS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW, AND THUS CONSTITUTES A DELEGATION OF UNLAWFUL POWER AND AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER.

Subparagraph (a) permits the Commission to prescribe a temporary rate which yields a return of only 5% on the original cost, less accrued depreciation, of the *physical* property of the utility when first devoted to the public use. Obviously such a rate can not provide that fair return upon the fair value of *all* of the utility's property used and useful in the public service, to which every public utility is constitutionally entitled. Likewise, this permitted minimum measure of return completely fails to take into consideration all but one, and only a part of that one, of the elements of fair value and fair return prescribed by the decisions of this Court. Section 310 (a) also permits the Commission to apply to this unconstitutional rate base a wholly arbitrary rate of return which fails to take into consideration any circumstances relating to the particular utility under consideration. The fact that the rates thus prescribed are temporary is without significance, since the requirements of procedural due process have been violated by the bases and methods used in fixing the rates.

We submit that the very existence of such a power directly violates the Constitutions of the United States and of the Commonwealth of Pennsylvania. *This contention requires a discussion first, of the nature and practical effect of this power, and second, of the legal effect of its existence.*

With respect to the first question, the essential requirements of due process of law demand that in prescribing rates the Commission must afford adequate notice and opportunity to be heard which includes the admission of all relevant evidence which may be offered, the opportunity to examine opposing testimony and a determination based on an adequate consideration of the entire record. This means that the Commission *must* consider and base its determination on:

(1) relevant evidence of present cost of construction, including indirect costs, working capital, going concern value, and all other evidence of "fair value"; and

(2) relevant evidence of what constitutes a fair return.

We submit that subparagraph (a) delegates to the Commission's uncontrolled discretion the power to ignore all such evidence, except that relating to depreciated original cost of physical property when first devoted to public use, to disregard all lawful methods of arriving at fair value and fair return, and, finally, to enter an order wholly unsupported by substantial relevant evidence. The purported authority to deny procedural due process carries with it impliedly a like authority to deny substantive due process, for in the exercise of that authority confiscatory rates may be imposed.

With respect to the second question, we submit that the legal effect of such purported power to deny due process, is a delegation of unlawful powers, and an unlawful delegation of powers—equally invalid.

**1. Subparagraph (a) of Section 310 Permits the Commission to Deprive a Utility of the Essential Requirements of Due Process of Law.**

*(a) Procedural Due Process of Law.*

The precedural requirements of due process of law have been firmly embedded in constitutional doctrine for many years. As applied to administrative tribunals, they were originally confined to the elemental concepts of adequate notice and hearing. However, with the tremendous growth of administrative law, and the consequent expansion both in numbers and in power of state and federal administrative bodies, this Court has gradually enlarged these requirements to cover first, admission and adequate consideration of all relevant evidence which may be offered; second, action which can be supported by substantial evidence and which, in the light of all of the evidence, is not arbitrary; and third, the utilization of reasonable and proper methods in arriving at an ultimate conclusion. It becomes important then, in the instant case, to determine whether or not the statute meets the constitutional tests imposed by this Court.

As a point of departure, it may be stated categorically that judicial review of the acts of administrative tribunals extends to their *procedure* in making orders.

*Interstate Commerce Commission v. Ill. Cent. R. R.*, 215 U. S. 452 (1910).

*Interstate Commerce Commission v. Union Pac. Ry.*, 222 U. S. 541 (1912).

*Interstate Commerce Commission v. Northern Pac. Ry.*, 216 U. S. 538 (1910).

*Railroad Commission v. Cumberland Tel. & Tel. Co.*, 212 U. S. 414 (1909).

*Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655 (1912).

*Kansas City So. Ry. v. U. S.*, 231 U. S. 423 (1913).

Thus, orders of regulatory agencies have been invalidated because no adequate or fair hearing was allowed;

*Interstate Commerce Commission v. Louisville and Nashville Ry.*, 227 U. S. 88 (1913).

*Atchison, Topeka & S. F. Ry. v. U. S.*, 284 U. S. 248 (1932).

or because there was no substantial evidence to support them or because the Commission considered matters which were not in the record or which, even though in the record, could not legally influence its judgment;

*Minnesota Rate Cases*, 230 U. S. 352 (1913).

*United States v. Abilene & So. Ry.*, 265 U. S. 274 (1924).

*Southern Pac. Ry. v. I. C. C.*, 219 U. S. 433 (1911).

*Ann Arbor R. Co. v. U. S.*, 281 U. S. 658 (1930).

*Ohio Utilities Co. v. Ohio Public Utilities Commission*, 267 U. S. 359 (1925).

*West Ohio Gas Co. v. Ohio Public Utilities Commission*, 294 U. S. 63 (1935).

or because the Commission refused to consider evidence which was introduced or which, as a matter of law, the Commission should have considered.

*So. Pac. Ry. v. I. C. C.*, 219 U. S. 433 (1911).

*B. & O. R. R. v. U. S.*, 264 U. S. 258 (1924).

*St. Louis & O'Fallon R. v. U.S.*, 279 U. S. 461 (1929).

*Missouri ex rel. Bell Tel. Co. v. Public Serv. Comm.*, 262 U. S. 276 (1923).

Thus, it appears that the essential requirements of due process of law **compel adequate notice and opportunity to introduce all relevant evidence, and to examine opposing evidence, and a judgment based upon the entire record.** These are the standards of due process of law which the foregoing cases have uniformly applied to the methods and procedure of administrative and regulatory agencies. We submit that provisions of Section 310(a) do not meet these constitutional standards.

As heretofore pointed out, this section permits the Commission to prescribe rates based solely upon original cost, to consider only the original cost of the physical property of the utility when first devoted to public use, and further to depreciate that cost. It is clear that the statute requires consideration of only one part of one of the elements of fair value, and permits the Commission to disregard the many other well-established elements which are relevant to, and must be considered in the fixing of rates.

In the leading case of *Smyth v. Ames*, 169 U. S. 466, 546-547, (1898), this Court laid down the essential basis for the prescription of rates as a fair return on the fair value of the property devoted to the public use. And in the same case the Court prescribed the factors which must be considered, as follows:

“And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the



Original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

These principles have been reiterated and elaborated by this Court in numerous cases since the rule was first announced.

It has been firmly established that reproduction cost or present cost is an essential element of the rate base and must be given due consideration in fixing fair value. In *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, et al.*, 262 U. S. 276 (1923), the Court said, at pages 288-9:

"It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today."

See also:

*St. Louis & O'Fallon Railway Co., et al. v. United States, et al.*, 279 U. S. 461 (1929);  
*Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287 (1933);  
*West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662 (1935);  
*Bangor Water Co. v. Public Service Commission*, 82 Pa. Superior Ct., 48 (1923);  
*Erie City, et al., Appellants v. Public Service Commission*, 278 Pa. 512 (1924).

Innumerable other decisions of this Court from 1898 to the present day lay down the hard and fast rule that original cost is *not* the sole measure of fair value, and that reproduction cost and all other elements affecting value must be given consideration in the fixing of rates.\* In *West v. Chesapeake & Potomac Telephone Company*, *supra*, the Court stated, at page 672:

"We have therefore held that where the present value of property devoted to the public service is in excess of original cost, the utility company is not limited to a return on cost. Conversely, if the plant has depreciated in value, the public should not be bound to allow a return measured by investment. Of course the amount of that investment is to be considered along with appraisal of the property as presently existing, in order to arrive at a fair conclusion as to present value, for actual cost, reproduction cost and all other elements affecting value are to be given their proper weight in the final Conclusion."

This rule, we submit, was in no wise altered by the decision of this Court in *Railroad Comm. of California v. Pacific Gas & Electric Co.*, 302 U. S. 388 (1938), where the Court held merely that the Commission was justified in ignoring evidence of reproduction cost which was so con-

\* The Commission devotes a large part of its brief to the proposition that reproduction, or present, cost should not be used as any index of value at all, and that no rate which allows a fair return on so-called "original cost prudently made" can be invalid or unconstitutional. The Appellee will not comment upon this argument in this part of its brief, since it is dealing here with the law as it has been announced by this Court and *now exists*, rather than with a request to this Court to change the existing law. A discussion of this point of the Commission's argument, however, will be found in Appendix B to this brief. In any event, even if the Commission's theory were adopted, the instant statute would nevertheless be invalid, since it prescribes the standard not of original cost or prudent investment, but a depreciated original cost of the physical property when first devoted to public use ignoring all indirect costs, working capital, and going concern value, and permits the use of an arbitrary rate of return, all of which are hereinafter thoroughly discussed.

jectural as to be of no probative value whatever. This was in no sense a holding that the Commission could legally ignore substantial evidence of present cost or value.

Moreover, the depreciation of the original cost of any kind of property, permitted by subparagraph (a), produces an utterly meaningless figure and one which certainly is not, and never has been, recognized as having any connection whatever with a rate base. Original cost is the expression of the dollars invested in the property; the cost is not a variable figure. Because the cost is immutable, it does not depreciate and cannot be depreciated. Even those who advocate the adoption of the so-called prudent investment theory (see concurring opinion of Brandeis, J. in the *Southwestern Bell Telephone Company Case*, *supra*), do not argue that when such original or historical cost prudently made is ascertained, the same should be depreciated in determining the rate base.

Such a monstrosity as "depreciated original cost" is meaningless as an index of value. It does not represent present cost. It does not represent historical cost. It does not represent present value. It does not represent anything. The Commission itself has on numerous recent occasions realized this and expressed itself against the concept of depreciated original cost. In its order nisi in the case of *Pennsylvania Public Utility Commission et al. v. Solar Electric Company*, 24 P. U. R. (N. S.) 337 (1938), (subsequent to its opinion in the case at bar) the Commission stated:

"It is the opinion of the Commission that the original cost of existing property, prudently invested, used and useful in utility enterprise, without any deduction for accrued depreciation represents the money which has been invested and should, therefore, constitute a proper rate base. The purpose of adopt-

ing original cost is to create a non-fluctuating rate base which will insure the investor a definite return, and at the same time, eliminate the premium which has been placed upon the ability of the utility to create imaginative values. In the instant case before the Commission the original cost rate base actually represents an amount of dollars prudently invested and it must therefore, follow that such amount is *not susceptible of deductions for depreciation* accrued on property itself. By this we mean that depreciation which may be accrued on such property as buildings, or the poles and wires of a distribution system, cannot be said to lessen the dollars of investment in that property."

The same language was used by the Commission in its order nisi in the case of *Pennsylvania Public Utility Commission v. Yardley Water & Power Co.*, [unreported] C. D. No. 11545 Pa. P. U. C., dated September 27, 1938, (likewise subsequent to its opinion in the case at bar) wherein the Commission adopted undepreciated original cost of used and useful property as a rate base and held that original cost could not be depreciated.

Another factor which this Court has required commissions to take into consideration is the necessary and experienced indirect costs which contribute to the value of a utility property as a whole. These costs were specifically recognized by the Court in *Des Moines Gas Company v. City of Des Moines*, 238 U. S. 153 (1915), wherein the Court confirmed the report of a special master which stated, at pages 166-7:

"In reaching the physical value of the plant in question by the process of reproduction, it is necessary to bear in mind that the present value thereof represents much more than the machinery therein, the labor of installing and constructing them, and putting them in place to perform their various functions, ready for the manufacture and distribution of

gas to its customers. Were the City of Des Moines without such a plant, and such a one as the complainant now owns was proposed, it would be found that much more than the mere cost of labor and material would be expended. Such expenditures are termed overhead charges \* \* \*."

To the same effect is the statement in *Brooklyn Borough Gas Company v. Prendergast, et al.*, 16 F. (2d) 615 (D.C. E.D. N.Y., 1926), at page 629:

"It is elemental industrial economics that the cost of land, material and labor does not represent the full amount that it is necessary to use in production or construction. That overheads are necessary, unavoidable, and must be allowed in this type of cases is recognized."

The uniform system of accounts relating to electric corporations, as prescribed by the Commission and now in force, recognizes the necessity of an allowance for general overheads in the capital accounts of such companies. It was so admitted by the sitting commissioner in this case (R. 560).

"It is universally recognized that a reasonable allowance for working capital must be made in determining the fair value of property for rate making purposes. Yet this statute permits the complete exclusion of this essential element. As was stated in *Brooklyn Borough Gas Co. v. Prendergast, et al.* (*supra*) at page 631:

"Of the necessity of adequate working capital in the management of any enterprise there can be no argument. It is the daily lifeblood stream of the business; it keeps the pay of those laboring for the company and the bills of his creditors in supply houses paid promptly."

Although Appellee concedes that going concern value is not "something to be read into every balance sheet"

(*Dayton Power & Light Co. v. Ohio P. U. C.*, 292 U. S. 290 (1934)) it is submitted that the necessity of *considering* going concern value as an element of fair value for rate purposes has been clearly and definitely established by the decisions of this Court. In *Des Moines Gas Company v. City of Des Moines* (*supra*), the Court stated, at page 165:

"That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned, although dedicated to public use."

The necessity and propriety of such an allowance, where there is substantial evidence of its existence, arises from the fact that a plant in operation with customers attached has a value over and above the cost of the mere physical property, and this should be included in the rate base in order to arrive at "fair value."

See:

*Galveston Electric Co. v. City of Galveston, et al.*, 258 U. S. 388 (1922);

*Los Angeles Gas & Electric Corp. v. Railroad Commission*, *supra*;

*Dayton Power and Light Co. v. Public Utilities Commission of Ohio*, *supra*;

*Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U. S. 398 (1934);

*International Ry. Co. v. Prendergast, et al.*, 1 Fed. Supp. 623, (D. C. W. D. N. Y., 1932);

*Brooklyn Borough Gas Company v. Prendergast*, *supra*.



In addition to the defects of Section 310 (a), pointed out above, the statute is further defective in its approval of a wholly arbitrary rate of return of 5%. The use of any fixed rate of return has many times been proscribed by this Court.

In *United Railways v. West*, 280 U. S. 234 (1930), this Court recognized the fluctuating nature of a fair rate of return, stating, at page 249:

"What is a fair return within this principle cannot be settled by invoking decisions of this court made years ago based upon conditions radically different from those which prevail today. The problem is one to be tested primarily by present-day conditions. . . . Nor can a rule be laid down which will apply uniformly to all sorts of utilities. What may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk. *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 48-50."

Likewise, in *Bluefield Water Works & Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U. S. 679 (1923), the Court stated, at page 692:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts."

See also: *Willcox v. Consolidated Gas Co.*, 212 U. S. 19 (1909); *Pennsylvania Power and Light Co., Appellant v. Public Service Commission*, 128 Pa. Superior Ct. 195 (1937); *Chambersburg Gas Company, et al., v. Public Service Commission*, 116 Pa. Superior Ct. 196 (1935).

The foregoing review of the more important decisions of this and other courts demonstrates that a rate is constitutional only if it provides a fair return upon the fair value of the utility's property used and useful in the public service. It is also clear that in determining such a constitutional rate certain factors must be considered if there is any substantial evidence to support them. These factors include original and present cost, each including indirect as well as direct costs, working capital and going concern value. Lawful rate making requires a consideration of not one, or a part of one of these factors, but all of them, as the judgment must be reasonable and based on a consideration of all of the relevant facts. As was stated by Chief Justice Hughes in the *Minnesota Rate Cases*, 230 U. S. 352, 434 (1913),

"The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

The standard so enunciated has been consistently followed by this Court. *Northern Pac. Ry. v. Dept. of Public Works of Washington*, 268 U. S. 39 (1925). Its latest expression may be found in the recent opinion of this Court in *West, et al., v. Chesapeake and Potomac Tel. Co.*, 295 U. S. 662 (1935), wherein this Court, without a finding of confiscation, condemned a rate because the method used by the Commission, namely, the application of a conglomerate mixture of price indices, did not conform to the constitutional standards of administrative procedure. The method of rate making permitted by Subparagraph (a) completely disregards not only the general concept of fair return upon fair value of property, but also the specific factors which this Court

has held must be given due consideration in the determination of such fair return upon fair value, in that:

(1) Present cost or value is completely disregarded, despite the fact that it has always been deemed a necessary element of the rate base.

*Missouri ex rel. Bell Tel. Co. v. Public Service Commission*, 262 U. S. 276 (1923).  
*California Water & Tel. Co. v. Railroad Commission of California, et al.*, 19 Fed. Supp. 11 (D. C. N. D. Cal. 1937).

(2) Original cost is made subject to depreciation, although it is obvious that such cost is constant.

(3) It permits the Commission to confine its consideration of this depreciated original cost to the **physical** property of the utility, disregarding all indirect costs and overheads contrary to established law.

*Des Moines Gas Company v. City of Des Moines* 238 U. S. 153. (1915)

*Brooklyn Borough Gas Co. v. Prendergast, et al.*, 16 F. (2d) 615 (D. C. E. D. N. Y. 1926).

(4) This original cost when first devoted to public use is not even the investment of the present owner, but that of the first owner.

(5) Section 310 (a) permits the entire exclusion of the necessary allowance for working capital.

*Brooklyn Borough Gas Co. v. Prendergast, et al.*, *supra*.

(6) No consideration need be given for going concern value despite the fact that this is a necessary element to be considered in any valid rate base.

*Des Moines Gas Company v. City of Des Moines*, *supra*.

The foregoing discussion establishes conclusively that Section 310 (a) permits the Commission to exclude or disregard evidence of almost all of the factors relevant to a determination of fair value, as well as evidence relating to a fair rate of return.

(7) An arbitrary rate of return may be imposed.

*United Railways v. West*, 280 U. S. 234 (1930).

*Thus, it permits the Commission to conduct a manifestly unfair hearing: to enter an order without proper evidence of fair value and fair return, and to refuse to consider relevant evidence and evidence which, as a matter of constitutional law, must be considered in prescribing rates. Clearly this is a violation of the constitutional standards of due process of law.*

(b) *Substantive Due Process Of Law.*

Section 310 (a) also violates the requirements of due process of law in the substantive sense. As heretofore pointed out, by permitting the Commission to prescribe rates as low as 5 per cent on depreciated original cost of the physical property of the utility when first devoted to public use, the statute allows the Commission to fix confiscatory rates. There is nothing which compels the Commission to consider factors of value which must enter into a proper determination of fair value. Surely it cannot be said that original cost is synonymous with fair value. Moreover, additional elements of property such as overheads, working capital, and going concern value may be disregarded.

This Court has never approved an arbitrary rate of return such as the 5 per cent permitted by Section 310(a). It is inconceivable that in any instance the rate of return based as it is on the depreciated original cost of the util-

ity's property when first devoted to public use could result in a non-confiscatory return. In most if not all instances it is evident that the Commission is given the power to fix a confiscatory rate.

Thus, in these various ways Section 310(a) gives the Commission the power to deprive a utility of its property without just compensation and without due process of law.

## **2. The Attempt to Clothe the Commission with Unlimited Power to Disregard Constitutional Rights Is in Itself Unconstitutional.**

The foregoing discussion under subsection 1 of this point demonstrates that Section 310(a) purports to empower the Commission in its uncontrolled discretion to deprive a utility company of the essential requirements of due process of law in the procedural sense, and to fix and prescribe confiscatory rates which deprive the utility of due process of law in the substantive sense. As a consequence, the statute is invalid and a violation of the Constitution of the United States, and also of the Constitution of the Commonwealth of Pennsylvania.

### **(a) Delegation of Unlawful Power.**

Section 310(a) contains only one standard of administrative action—5% of depreciated original cost of physical property when first devoted to public use. We submit that the foregoing discussion has demonstrated that it is an unconstitutional standard—that not only confiscation of the property of a utility, but also a denial of the essential requirements of procedural due process of law, is committed to the sole and uncontrolled discretion of the Commission.

Moreover, the Commission itself concedes that the measure of return permitted by the statute may be confiscatory. This power—to deprive a utility of its constitutional rights—is a power which the legislature itself does not possess. Clearly, the legislature could not pass a law definitely prescribing rates for all utilities in Pennsylvania sufficient to yield a return of 5% of depreciated original cost of physical property when first devoted to public use of the utilities. Such a statute would be obviously unconstitutional. Therefore, although it is not disputed that the power to fix rates is a legislative function which may properly be delegated to a commission, there can be no delegation of a power to fix confiscatory rates—a power which does not exist anywhere, even in the legislature itself. This limitation upon the delegation of power is implicit in the words of Chief Justice Marshall in the case of *Wayman v. Southard, et al*, 10 Wheaton 1, 43 (1825), wherein he stated:

“\* \* \* but Congress may certainly delegate to others, powers which the legislature may **rightfully** exercise itself.”

It is no answer to say that the statute is permissive and that it must be presumed that the Commission will not act in an arbitrary manner. It is too clear for argument that a statute must be judged by what it permits, regardless of what may be done in specific instances.

In other words, the statute must prescribe a constitutional standard, a legal and valid framework within which the discretion of the administrative body must be exercised. If the statute does not set constitutional limits for this framework, it is invalid.



Thus, in *People v. Klinck Packing Company*, 214 N. Y. 121 (1915), the Court of Appeals of New York stated, at page 138:

"The question whether the statute shall take effect in any, all or no cases, is left wholly to his (Commissioner's) volition. Under its terms he has the power without check or guidance, so far as we can perceive, to veto the entire clause and decide that its benefits shall never be extended to any case, although it comes within the precise terms of the statute, or to permit the exemption in one case and deny it in another precisely similar one. Of course, it is not to be assumed that the Commissioner of Labor would intentionally be arbitrary and unreasonable in the exercise of this power, but nevertheless, the legislature has attempted to confer upon him the opportunity which would permit of these shortcomings, and we are to judge of a statute by what is possible under it."

Likewise, the Supreme Court of the United States stated in *Panama Refining Company v. Ryan*, 293 U. S. 388 (1935), at page 420:

"The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted and will act for what he believes to be the public good. The point is not one of motives but of constitutional authority for which the best of motives is not a substitute."

See also:

*Security Trust & Safety Vault Co. v. Lexington*, 203 U. S. 324, 333, (1906).

*The Montana Co. v. The St. Louis Mining & Milling Co.*, 152 U. S. 162, 170 (1894).

*In Re Christensen*, 43 Fed. 243, 247, (C. C. N. D. Cal. 1890).

*Grainger v. Douglas Park Jockey Club*, 148 Fed. 513, 520 (C. C. S. D. N. Y. 1903).

In the instant case the legislature of Pennsylvania has, by Section 310, attempted to clothe the Commission with the power to prescribe arbitrary, confiscatory and unconstitutional temporary rates,—a power which the legislature itself does not and never can have and which, therefore, it cannot delegate to the Commission. A statute which places the right to exercise such power in the hands of an administrative body is, therefore, doubly invalid.

This rule finds a striking analogy in cases dealing with the constitutional requirement of reasonable notice and an opportunity to be heard in any judicial proceeding. Recently this Court has held that a necessary element of state statutes authorizing proceedings against non-residents is a *requirement*, not merely a permission, that reasonable notice be given to the prospective defendant.

In *Wuchter v. Pizzutti*, 276 U. S. 13 (1928), the Court considered the validity, under the Fourteenth Amendment, of a New Jersey statute which provided for service of process on non-residents of a state in suits for injury due to the negligent operation of automobiles on the State's highways. In the particular case involved, Wuchter, a resident of Pennsylvania, was involved in an accident while driving upon the highways of New Jersey. An action was instituted against him by Pizzutti, and he was served with process by leaving the process with the Secretary of State. No defense was interposed and an interlocutory judgment was taken against him. It appeared of record that after the interlocutory judgment was taken, notice of its proposed execution was actually and personally served on Wuchter in Pennsylvania despite the absence of such a requirement in the statute. Wuchter did not appear and a final judgment was entered. He then appealed to the Supreme Court, contending

that the New Jersey statute under which process was served upon him was unconstitutional as a denial of due process of law.

On these facts, a majority of this Court reversed the judgment on the grounds (page 25):

“ \* \* \* that the statute of New Jersey under consideration *does not make provision for communication* to the proposed defendant such as to create reasonable probability that he would be made aware of the bringing of the suit \* \* \* ”

After holding that the statute under consideration did not meet the minimum requirements of due process of law, the Court commented upon the fact that these requirements had actually been met in the case before it by the personal service of notice. In this connection the Court stated (page 24):

“ But it is said that the defendant here had actual notice by service out of New Jersey in Pennsylvania. He did not, however, appear in the cause and such notice was not required by the statute. *Not having been directed by the statute, it can not, therefore, supply constitutional validity to the statute or to service under it.* Coe v. Armour Fertilizer Works, 237 U. S. 413, 424, 425; Louisville & N. R. Co. v. Central Stock Yards Co., 212 U. S. 132, 144; Central of Georgia R. Co. v. Wright, 207 U. S. 127, 138; Security Trust & S. V. Co. v. Lexington, 203 U. S. 323, 333; Roller v. Holly, 176 U. S. 398, 409; Stuart v. Palmer, [25] 74 N. Y. 183, 188; Berryhill v. Sepp, 106 Minn. 458.”

Here we have a clear holding that a statute which does not require compliance with constitutional standards is invalid, and any action taken pursuant to such a statute is utterly void, regardless of the fact that in any particular case constitutional standards have been complied with.

In the instant case, as we have seen, Section 310 (a) purports to delegate to the Commission a power which the legislature itself may not rightfully exercise, a power which under our Constitution does not and cannot exist. Such a purported delegation is a complete nullity, and it requires no citation of authority to demonstrate that one cannot give to another what one does not possess.

(b) *Unlawful Delegation of Power.*

Article II, Section 1, of the Constitution of the Commonwealth of Pennsylvania provides:

“The legislative power of this commonwealth shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives.”

The legislative power so conferred may not constitutionally be delegated, except within a framework, prescribed by the legislature, which establishes the standards for administrative action. This is a doctrine not only well established by the decisions of this Court,\* but is also firmly embedded in the law of the Commonwealth of Pennsylvania.

In *Holgate Bros Co. v. Bashore*, 331 Pa. 255 (1938) the Pennsylvania Supreme Court stated:

“Legislative power in Pennsylvania is vested solely in the General Assembly \* \* \* the powers and duties imposed by the Constitution upon the legislative branch of our government remain steadfast and neither the urgency of the necessity at hand nor the gravity of the situation allow the legislature to abdicate, transfer or delegate its authority or duty to another branch of the government. \* \* \*

\* See *Panama Refining Company v. Ryan*, supra; *Shechter v. U. S.*, 295 U. S. 495 (1935); *J. W. Hampton, Jr. & Company v. U. S.*, 276 U. S. 394 (1927).

"The legislature may, however, leave, to administrative officers, boards and commissions, the duty to determine whether the facts exist to which the law is itself restricted. In all such occasions, nevertheless, the legislative body must surround such authority with definite standards, policies and limitations to which such administrative officers \* \* \* must strictly adhere and by which they are strictly governed.

"It is absolutely essential that limits be set on the power conferred on such tribunals and that the scope of their authorized action clearly appear \* \* \* If the legislature fails to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad its attempt to delegate is a nullity \* \* \*."

In *York Railway Company v. Driscoll*, 331 Pa. 192 (1938), decided the same day as the *Holgate* case; *supra*, the Pennsylvania Supreme Court declared unconstitutional Section 601(a) of the Public Utility Law, relating to the issuance of securities certificates by the Commission, and declared that the provisions of that law, authorizing the Commission to exempt utilities from its requirements as to any class of securities, made the entire provision in question invalid, as an unlawful delegation of legislative power.

See also:

*O'Neill v. Insurance Co.*, 166 Pa. 72 (1895).

Sub-paragraph (a) of Section 310 is a delegation of the legislative power to prescribe temporary rates. There is but one standard stated by the legislature as the sole guide for administrative action by the Commission. This standard—5% of the depreciated original cost of the physical property when first devoted to the public use—is no standard at all; for as we have already shown in the dis-

cussion immediately preceding, it is an unconstitutional standard which the legislature was, therefore, without authority to enact. Stripped of that invalid standard subparagraph (a) is a naked, unrestricted delegation of the legislative power to fix temporary rates—without regard to method, without regard to anything. As such it is a clear violation of the Pennsylvania Constitution.

The test of a state statute by the state constitution is a local matter, normally to be decided by the State courts. In this case, however, while we have no doubt that the Pennsylvania Supreme Court would follow its firmly established and recently reiterated doctrine of unlawful delegation of legislative powers, the Appellee was foreclosed from presenting the question in the State courts, because the terms of the public utility law deny any effective right of appeal from a temporary rate.\* However, this Court has ample authority to declare in this case that sub-par graph (a) contravenes the constitution of the Commonwealth.

*Sterling v. Constantine*, 287 U. S. 378, 393 (1932).

*Louisville & N. R. Co. v. Garrett*, 231 U. S. 298 (1913).

*Railroad Commission v. Pacific G. & E. Co.*, 302 U. S. 388 (1938).

*California Water Service Co. v. City of Redding*, 304 U. S. 252 (1938).

It may be argued that if the unconstitutional standard of 5% return on depreciated original cost of physical property when first devoted to public use is deleted,

\* Section 1103 of the Pennsylvania Public Utility Law prevents the granting of a supersedeas in cases of appeal from the imposition of temporary rates. Said section is printed in full in Appendix A hereof.



sub-paragraph (a) may be valid because of an implied standard. This contention would rest on the claim that the paragraph, with such deletion, would simply authorize the prescription of temporary rates, and that implicit in such authority would be a standard that such rates be constitutional; or, otherwise stated, that they yield a fair return on the fair value of the utility's property. However, to suppose any such unexpressed intent on the part of the legislature contradicts the intent very clearly expressed and disclosed by the statute itself.

The fact that the legislature prescribed an unconstitutional standard establishes very plainly that it did not intend another and far different standard which happens to be constitutional. Plainly the statute was enacted to provide a *shortcut* method of fixing temporary rates which might be based on the consideration of only a part of one element of fair value. Surely the legislature could not have intended at one and the same time to prescribe a standard for the determination of temporary rates which must include all elements. If we consider subparagraph (b) of Section 310, to which this entire argument is equally applicable, we find the same contradiction. Can it be reasonable to suppose that the same legislature which prescribed annual operating income as the sole standard of rates prescribed under subparagraph (b), where the utility has no continuing property records, intended that the rates be determined on a consideration of all elements of fair value and fair return? Its mere statement shows that such a supposition is preposterous.

As is common in all cases where a statute is attacked as an unlawful delegation of legislative power, a justification is attempted by urging that there is a presumption

that the commission will act properly and by attempting to point out that the statute is permissive and not mandatory in its prescribed standard. Such attempted rebuttal has uniformly been rejected. See *Panama Refining Company v. Ryan, supra*; *People v. Klinck Packing Company, supra*. The courts of the commonwealth also test the validity of a statute by what it permits. In *Commonwealth ex rel Margiotti v. Sutton, et al.*, 327 Pa. 337 (1938) the court stated at page 345:

“Another answer made on behalf of the respondents is that ‘this elause may never actually be used’; but we must deal with the authority conferred, not with the possibility that the family judges may not exercise it.”

It must inevitably be concluded, therefore, that subparagraph (a) of Section 310, for its failure to provide any constitutional standard or framework of administrative action by the Commission in prescribing temporary rates, violates the Constitution of the Commonwealth of Pennsylvania, and is, therefore, a nullity.

## B.

### SUBPARAGRAPH (B) OF SECTION 310 IS LIKEWISE UNCONSTITUTIONAL.

While the Commission asserts that it proceeded, in making the order complained of, under subparagraph (a) of Section 310, it has already been shown, in Point I hereof, that the Commission ignored the plain language of the Act by not proceeding under subparagraph (b) of that Section. It is submitted, however, that subparagraph (b) is unconstitutional for even more reasons than subparagraph (a).

The entire argument as to the unconstitutionality of subparagraph (a) is applicable here. Subparagraph (b) fails of constitutionality for the same reasons. Both subparagraphs attempt to impose standards of rate making which entirely disregard the fundamental principles of constitutional rate making laid down by this Court. They ignore fair value and they ignore fair return.

Subparagraph (b) gives the Commission authority to fix the allowable return, and the rates which will realize this, in the amount of operating income "as adjusted" of the utility for the year 1935, or of any year subsequent thereto. The Commission is permitted to take any one year and say to the utility, wholly irrespective of whether or not the year was abnormal, unprofitable or unique because of non-recurring operating conditions, such as flood or casualty, that its return shall be no more than its operating income for that period. The Commission, in addition, may make such adjustments of the utility's reported operating income as it believes necessary and proper. Such procedure has no possible relation to the fair return on fair value to which the utility is entitled, and makes a mockery of all the existing law on valuation procedure. Confiscation again rests in the Commission's uncontrolled discretion. The authorized basis for temporary rates in this subparagraph is entirely arbitrary, and thus the subparagraph denies to the utility the essential elements of due process of law in the procedural and substantive senses, and in addition violates the Constitution of Pennsylvania.

## C.

THE ALTERNATIVE BASES FOR THE PRESCRIPTION OF TEMPORARY RATES IN SUBPARAGRAPHS (A) AND (B) DENY TO UTILITIES THE EQUAL PROTECTION OF THE LAWS.

The equal protection of the laws to all persons and corporations similarly situated is specifically guaranteed by the Fourteenth Amendment. The guarantee has been called "a pledge of the protection of equal laws." *Yick Wo v. Hopkins*, 118 U. S. 356, 369, (1886). Many decisions of this Court have laid down the general principles governing the nature and limits of this protection, holding that it prevents discrimination between persons similarly situated, and classification which has no substantial relation to the general object of the legislation.

In *Atchison, Topeka and Santa Fe Railroad Company v. Matthews*, 174 U. S. 96, 104-105, (1899), this Court set forth the tests which a State statute must meet in order to afford the equal protection of the laws. The Court said:

"Class legislation, discriminating against some and favoring others, is prohibited, *but legislation which in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.*"

...

"It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole, and courts will not lightly hold that an act duly passed by the legislature was one in the enactment of which it has tran-

scended its power. On the other hand, it is also true that the equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. *Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed.*

\* \* \*

In accordance with these general principles, this Court time and again has declared invalid legislative enactments which discriminate arbitrarily.

In *Frost v. Corporation Commission*, 278 U. S. 515 (1929), a statute compelled all those applying for a permit to operate a cotton gin to prove public necessity, except certain co-operative corporations organized for the purpose of conducting, among other things, an agricultural or horticultural business. Appellant sought to enjoin the Commission from issuing a permit and prevent the corporation from establishing a cotton gin upon the ground, *inter alia*, that the exception was invalid as contravening the equal protection of the law clause of the Fourteenth Amendment. In upholding this objection the Court stated (pages 522, 523):

"The purpose of the clause in respect to equal protection of the laws is to rest the rights of all persons upon the same rule under similar circumstances. *Louisville Gas Co. v. Coleman*, 277 U. S. 32, 37. This Court has several times decided that a corporation is as much entitled to the equal protection of the laws as an individual. *Quaker City Cab Co. v. Penna.*, 277 U. S. 389, 400; *Kentucky Corp'n v. Paramount Exchange*, 262 U. S. 544, 550; *Gulf, Colorado & Santa Fe Ry. v. Ellis*, 165 U. S. 150, 154. The converse, of course, is equally true. A classification which is bad because it arbitrarily favors the individual as against the corporation certainly cannot be good when it favors the corporation as against the individual. In either case, the classification, in order to be valid, 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons *similarly circumstanced* shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415; *Air-way Corp. v. Day*, 266 U. S. 71, 85; *Schlesinger v. Wisconsin*, 270 U. S. 230, 240. That is to say, *mere* difference is not enough: the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' *Gulf, Colorado & Santa Fe Ry. v. Ellis*, 165 U. S. 150, 155. *Louisville Gas Co. v. Coleman*, *supra*, p. 37.

. . .

"Stripped of immaterial distinctions and reduced to its ultimate effect, the proviso, as here construed and applied, baldly creates one rule for a natural person and a different and contrary rule for an artificial person, notwithstanding the fact that both are doing the same business with the general public and to the same end, namely, that of reaping profits. That is to say, it produces a classification which sub-



jects one to the burden of showing a public necessity for his business, from which it relieves the other, and is essentially arbitrary, because based upon no real or substantial differences having reasonable relation to the subject dealt with by the legislation. *Power Co. v. Saunders*, 274 U. S. 490, 492; *Louisville Gas Co. v. Coleman*, *supra*, p. 39; *Quaker City Cab Co. v. Penna.*, *supra*, p. 402."

In *Cotting v. Kansas City Stock Yards Co. &c.*, 183 U. S. 79 (1901), this Court held invalid an act prescribing certain regulations when a stock yard received more than 100 head of cattle or more than 300 head of hogs or more than 300 head of sheep, but exempted any individual stock yard which received less than these amounts.

After a review of the authorities on the subject, this Court stated (pages 111, 112):

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions *burdens are cast which are not cast upon the other*. There can be no pretence that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. *It is the same business in all its essential elements, and the only difference is that one does more business than the other*. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may

regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, *but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do.* If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

See also:

*Gulf, Colorado and Santa Fe Ry. Co. v. Ellis*,  
165 U. S. 150 (1896).

The prohibition against discriminatory legislation is not affected by the reserved powers of the States—the police power—since the prohibition, contained in the Federal Constitution, is the Supreme law and constitutes a limitation upon the exercise of such reserved powers.

*Connolly v. Union Sewer Pipe Co.*, 184 U. S.  
540 (1902).

Section 310(a) provides that the Commission may fix a return for a utility at 5% of the depreciated original cost of its physical property when first devoted to public use, while Section 310(b) provides that if the utility does not have continuing property records in the form prescribed by the Commission the latter may then fix a return equal to the operating income of the utility for 1935 or such subsequent year as the Commission may choose.

Under these provisions two utilities exactly the same in character, operating conditions and operating income may have different rates prescribed for them if one of them has been operating under a different bookkeeping system than that which the Commission is authorized to require. At the present time, the existence of continuing property records is purely fortuitous. Furthermore, their existence has no possible relation to the purpose of rate making, or to the elements which enter into a determination of reasonable rates.

Thus, two utilities might have property of the same fair value, the same reproduction cost, the same original cost. They might also be operating under precisely similar conditions, so that each would be entitled to the same rate of return applied to such identical fair value. Yet under the provisions of Section 310, if one of these utilities happens to have kept continuing property records, it would receive materially different treatment under the law. And this would be true regardless of the Court's construction of the provisions of subparagraph (b). If subparagraph (b) is mandatory, the unreasonable discrimination resulting from this classification is caused by the statute itself. If subparagraph (b) is merely permissive, then the Commission is granted the unlimited power to discriminate between these two identical utilities. In either case, we submit the statute is equally invalid, since it permits discrimination between corporations identically situated and uses as the test of such discrimination a factor which cannot reasonably be said to have any relation to the object of rate making or to its elements. Here, as in the *Cotting case, supra*, equal protection is denied because "upon one of two parties engaged in the same kind of business and under the same

conditions burdens are cast which are not cast upon the other."

In the *Cotting case*, the Court held that "It is the same business in all its essential elements, and the only difference is that one does more business than the other." In the instant case it is likewise the same business in all its elements, and the only difference is that one business happens to employ a bookkeeping system which the other does not.

#### D.

SUBPARAGRAPHS (A) AND (B) OF SECTION 310 ARE NOT VALIDATED BY THE SO-CALLED "RECOUPMENT" PROVISION OF SUBPARAGRAPH (E):

The Commission contends that even though it did impose rates otherwise confiscatory, their validity is saved by the so-called recoupment provisions of subparagraph (e) of Section 310. This subparagraph provides that if final rates are in excess of temporary rates the utility "shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order, and the gross income which would have been obtained under the rates finally determined, if applied during the period such temporary order was in effect." The Commission's contention is apparently based on the theory that confiscation today is constitutional so long as some kind of a provision is made for partial repayment tomorrow, even though this provision is totally silent as to the manner in which, and the time within which, repayment is to be made.

The Fourteenth Amendment to the Constitution of the United States prohibits the taking of private property without just compensation. This is the fundamental theory upon which is based judicial control of administrative agencies charged with the duty of regulating the rates of public utilities. It is at once the source of judicial power and the test of the validity of administrative action. As construed by a long line of decisions of this Court, the words "just compensation", as applied to the regulation of rates, require the allowance of a return commensurate with a fair return upon the fair value of the property of the utility used and useful in the public service. The prescription of rates allowing a return less than this amount does not provide that just compensation to which the utility is constitutionally entitled. Such a rate is confiscatory and invalid. To say that possible partial repayment tomorrow, which is guaranteed neither as to time nor amount, may remedy this deprivation of constitutional rights, is to make a mockery of the Constitution itself.

The Commission argues that such a step is necessary or convenient in the public interest. The facts in the instant case amply demonstrate the fallacy of this argument. But regardless of these facts, we submit that necessity should never be the mother of constitutional law. The adoption of a doctrine which requires or permits the construction of constitutional safeguards so as to justify even a small or temporary disregard of constitutional rights, is the first step toward a definite policy which discards the principles of democracy.

As was well said by Mr. Justice Bradley in *Boyd v. United States*, 116 U. S. 616, 635 (1886):

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

One of the latest reiterations of this doctrine is the opinion of this Court in *Jones v. Securities and Exchange Commission*, 298 U. S. 1 (1935), wherein the Court said at pages 24, 25:

"Arbitrary power and the rule of the Constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought into conflict. To borrow the words of Mr. Justice Day—'there is no place in our constitutional system for the exercise of arbitrary power'. *Garfield v. United States*, 211 U. S. 249, 262. To escape assumptions of such power on the part of the three primary departments of the government, is not enough. Our institutions must be kept free from the appropriation of unauthorized power by lesser agencies as well. And if the various administrative bureaus and commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments—even petty encroachments—upon the fundamental rights, privileges and immuni-



ties of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

The so-called functional approach to constitutional problems is admirable. But to stretch the practical aspect of legal problems to the point at which they transcend the bounds of legal authority is a concept which has never had and should never have the sanction of this Court. Twenty years ago Dean Roscoe Pound of the Harvard Law School, in his article entitled "The Administrative Application of Legal Standards", printed in 44 *American Bar Association Reports*, 445 (1921), discussed in detail the functional approach to the judicial administration of justice. He pointed out the dangers of ordering society on the basis of administrative convenience. Dean Pound's approach was not from the legal precedents under a constitutional system, but was rather an historical approach from the viewpoint of individual and social ethics. He concluded that most expedients sacrifice more in justice than they secure in convenience, and do not in fact further the legal ordering of society.

So also in the realm of American constitutional law, if we apply only the test of superficial convenience and forget the general interests of society in a proper administration of law and justice, we are on the road to an administrative law which disregards that legal ordering of society—that general security—and satisfies itself with what Mr. Justice Frankfurter has aptly called "rampant empiricism".\*

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\* Frankfurter, "The Task of Administrative Law", 75 *Univ. of Pennsylvania Law Review* 614 (1927).

In *Prendergast v. New York Telephone Co.*, 262 U. S. 43 (1923), the Supreme Court sustained an injunction against enforcement of an order of the New York Public Service Commission temporarily reducing the rates of the telephone company during the course of a rate investigation. The fact that the order was merely temporary in effect was held not to deprive the utility of redress. At page 49 this Court stated:

“Nor did the fact that the orders of the Commission merely prescribed temporary rates, to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were *final legislative acts* as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory, the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory, the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process. *Cumberland Telephone & Telegraph Co. v. Louisiana Commission*, *supra*. And see, by analogy, *Oklahoma Natural Gas Co. v. Russell*, *supra*; and *Love v. Atchison Railway Co.* (C. C. A.) 185 Fed. 321, 326 (affirming 174 Fed. 59, and 177 Fed. 493).”

The due process clause, in prohibiting the taking of property without just compensation, makes no distinction between temporary confiscation and permanent confiscation. Thus, in principle, a confiscatory rate may not be sustained merely because it is not to be continued in effect forever. For every day of its continuance there is a constant taking of property without just compensation.

In *Laclede Gas Light Co. v. Public Service Commission of Missouri*, 8 Fed. Supp. 806 (D. C. W. D. Mo., 1934), the Court in treating with this proposition said (p. 809):

"It is earnestly urged by defendants and intervenor that the Commission's order should be permitted to go into effect because it is intended only to be temporary. But, as we have pointed out, the order itself is not so limited. Moreover, *the constitutional prohibition against the taking of property without due process of law contains no exception permitting a taking of some property or a taking during a limited period of time.*"

In *Love, et al., v. Atchison, Topeka & Santa Fe Ry. Co.*, 185 Fed. 321 (C. C. A. 8th, 1911), an injunction was granted against an order reducing passenger and freight rates of the railway company. It was contended that the suit was prematurely brought because the rates complained of were imposed merely during the continuance of a rate investigation, at the termination of which a final rate was to be fixed. The Court held this contention to be unsound, stating, at page 327:

"The legislative function in rate making looks to the future and determines what future rates shall be. But when rates, either tentative or final, have been put and are maintained in actual operation under penalty of severe fines, the question whether or not their effect is to take the property of the railroad companies affected thereby without just compensation is a judicial one, conditioned by past or present facts, and the national courts cannot be deprived of jurisdiction of it by the fact that the process of making the tentative rates is yet incomplete. *It is as clear a violation of the constitution, and one as promptly remediable in the national courts, to take the property of a railroad company without just com-*

*compensation by the enforced operation of tentative rates during the process of their making, as by the operation of final rates after the process is complete."*

In *Mountain States Tel. & Tel. Co. v. Utah Public Utilities Commission*, 8 Fed. Supp. 307 (D. C. D. Utah, 1934), in considering the asserted temporary character of a rate reduction order, the Court said, in granting an injunction (at p. 310):

"It is further contended for the commission that its order should be regarded as temporary and would probably be modified at the conclusion of the statewide inquiry. The order itself made the reduction 'pending the further hearing and determination of this case and until the further order of the commission'. But if the order is not stayed it will take effect as of last April, the statewide inquiry will not be resumed until next October, *and confiscation will go on*. *United Railways v. West*, 280 U. S. 234, 249."

It is argued that under the Pennsylvania law there can be no taking of property because of the recoupment provision of Section 310 (e). But clearly the loss occasioned to the complainant by fixing confiscatory temporary rates cannot be fully compensated for by fixing rates in the future in excess of the current legal requirements.

In *Oklahoma Natural Gas Company v. Russell, et al.*, 261 U. S. 290 (1923), Mr. Justice Holmes, writing for this Court, said (page 293):

"Coming to the principal question, if the plaintiffs respectively can make out their case, as must be assumed for present purposes, they are suffering *daily* from confiscation under the rate to which they now are limited. They have done all that they can under the state law to get relief and cannot get it. If the Supreme Court of the State hereafter shall

change the rate, even *nunc pro tunc*, the plaintiffs will have no adequate remedy for what they may have lost before the court shall have acted." (Citing with approval *Love v. Atchison, T. & Santa Fe R. Co.*, *supra*, and *Springfield G. & E. Co. v. Barker*, 231 Fed. 331 (D. C. W. D. Mo., 1915.))

The argument that future recoupment might compensate present loss was rejected by the Court in *Springfield Gas & Electric Co. v. Barker*, *supra*, at page 335, as follows:

"A sufficient answer to this argument is found in the fact that consumers of electricity are constantly changing, and that additional charges could scarcely be enforced against those who had not enjoyed the lower rate."

That a provision for recoupment of losses due to confiscation during the effective period of a temporary rate cannot be fully compensatory is inherent in the nature of the immeasurable, as well as irreparable, damages which may be incurred by the utility during the operation of the temporary rate. This becomes very evident by the application of the dialectical principle of *reductio ad absurdum* to the theory that future recoupment is just compensation for present confiscation. If this theory is sound as applied to rate making, then a temporary rate might be imposed which was inadequate to yield a return equal to the cost of operation and maintenance,—outrageously confiscatory—but yet justly compensable by a permanent rate providing future recoupment—of necessity outrageously high. Under such circumstances, can it conceivably be argued that the damage to the utility, to its security holders, and to the public, from the drastic confiscation and the disability to perform its public service, could be justly compensated

by any provision for future recoupment? If the confiscation is not so drastic, the difference is merely in degree, not in principle. It is no answer to say that a little uncompensated confiscation may be all right; for constitutional safeguards are not so framed as to countenance some degrees of violation, and to prevent others.

(a) The so-called "recoupment" may never operate at all, in which case the "temporary" confiscation becomes permanent and final.

The Commission is attempting to do *indirectly* that which it cannot constitutionally do *directly*. Admittedly the Commission could not legally prescribe final confiscatory rates. However, the appellants argue that a temporary confiscation is constitutional, compensation being afforded by subparagraph (e) of Section 310.

It is patent, therefore, that the constitutionality of the Commission's power to impose temporary rates is dependent upon: first, the temporary character of the rates and, second, the existence of adequate recoupment. Analysis of this suggested regulation clearly demonstrates its unconstitutional results. It must be conceded that if there is *any element of finality* in the confiscatory rates authorized under Section 310 then such rates must fall, as a permanent rate not affording a fair return on the fair value of a utility's property cannot stand.

Subdivision (e) purports to provide recoupment to the *utility*. If the temporary rate yields less than a fair return, it is the property of the *utility* which is taken. If the recoupment provision of subdivision (e) is to provide the just compensation which avoids confiscation, then that just compensation, that recoupment, must be



certain, and assured to the one which has suffered the loss to be recouped. That one only, under the statute, and as a matter of simple fact, is the utility.

But in reality there is no assurance of recoupment to the utility which suffers the "temporary" loss, and this for a number of reasons:

(1) The properties of utilities which are part of holding company systems, (and the appellee is one) may likely be subject to sale in order that the so-called integration provision of paragraph 11 of the Public Utility Holding Company Act may be complied with. If a utility sells its property with a temporary rate in effect, and the final rate thereafter fixed is greater than the temporary rate, obviously, under the statute, for the period of the temporary rate before the property was sold, there is an admitted taking of the utility's property, its fair return, to the extent that the temporary rates were less than the final rates. This taking, in order not to be out-and-out confiscation, must be compensable. Yet the *utility*, the only one under the statute entitled to compensation, then no longer has property, no longer has customers, is no longer rendering service. The recoupment provided for by statute is impossible to even a slight extent.

Since recoupment is in its very nature the making up of a loss to one who has suffered it, the property itself, which has been transferred, is not entitled to the increased rate. Nor is the transferee of the property, who has lost nothing by the temporary rate, entitled to recoupment, either as a matter of law under the statute, nor as a matter of simple justice and equity.

The utility which has suffered the loss has suffered it irretrievably. It cannot recoup. For it the confiscation of its property is complete and final.

(2) The "temporary" confiscation may be so drastic as to disable the utility from existing until the time of recoupment is reached. Particularly is this true when the time of recoupment is uncertain. The utility may very well have become bankrupt before it receives the "just compensation" by way of recoupment.

(3) All or part of the property of the utility may be destroyed during the pendency of the confiscatory rates, so that the utility will not be able to render the service necessary to provide it with "recoupment".

(4) The so-called recoupment provision may not be in existence when the final rate is fixed. There is nothing to prevent the Legislature of Pennsylvania from repealing this section after a temporary rate has become effective, but before the final rate is fixed. Since the utility has no vested rights under the statutes, it could have no legal complaint based on its repeal. In such a case, its property would have been confiscated without even the hope of just compensation. Even so, it would have no constitutional remedy for this unconstitutional act. In *Bluefield W. W. & Improvement Company v. P. S. C.*, *supra*, at page 694 the Court remarked on—

"The fact that the company may not insist, as a matter of constitutional right, that past losses be made-up by rates to be applied in the present and future tends to weaken credit and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it."

(b) **Recoupment may not be adequate to provide "just compensation."**

(1) Even though the utility is not rendered insolvent, its financial condition may be seriously injured by "temporary" confiscation. The exact extent in dollars to which it may be damaged is in the nature of things, incapable of measurement. Yet it must be obvious to any person having any familiarity with the financing of utility enterprises that a utility's credit may be seriously impaired by a temporary blot on its financial standing. Certainly its ability to attract capital will be lessened, and this, to a utility, is vital if it is to continue its public service and to extend it as required by the normal growth of the territory it serves (see *Bluefield W. W. & Improvement Co. v. P. S. C.*, *supra*).

(2) The utility may, because of impaired credit standing, be required to pay a higher interest rate for money even if the confiscation due to the temporary rate is not so great as to render it totally unable to attract necessary capital. The loss to the utility in this instance is one which cannot be compensated by a future recoupment of its loss in income.

(3) The temporary rate may well be such as to prevent the utility from properly maintaining its property. In such event a recoupment at a future time of the difference in dollar income could never be fully compensatory. It invariably costs more to make repairs long after they become necessary than it would have cost at the time they should have been made.

These factors and their reality were fully explained in the testimony of Mr. George Knutson, a utilities financial expert (R. 1078).

(c) Even assuming that, theoretically, a provision for complete recoupment of all damages might be devised which would provide just compensation in the future for a present taking of property, nevertheless, the provisions of Section 310 (e) do not accomplish this purpose, and therefore, cannot be relied on to validate an otherwise unconstitutional statute.

At the outset of a consideration of these provisions, it is important to note that the Commission has only limited powers—those given to it by the Public Utility Law. It cannot enlarge them. It cannot itself legislate so as to expand the presently existing provisions of the Public Utility Law to a theoretically perfect state. For this reason we must consider only the provisions of Section 310(e) as they now exist, rather than a possibly more complete or adequate recoupment provision which the Legislature of Pennsylvania might have enacted into law, but which the Commission is and will be powerless to consider. The recoupment provision as it now stands is not only inadequate but wholly illusory.

(1) *Section 310 (e) does not guarantee to the utility that it will ever receive just compensation for the taking of its property, nor does it offer any security whatever for the payment of this just compensation.* The utility must rely solely on the future legislative action taken by the Commission when the final rate is fixed. Yet it has uniformly been held that the ascertainment and payment of just compensation for the taking of property is a constitutional necessity.

The decisions in cases involving the taking of property by eminent domain furnish a complete analogy, and are recognized as applicable to the rate making process.

In *West v. Chesapeake & Potomac Tel. Co.* (supra), it was stated (at page 671):

"The established principle is that as the due process clauses (Amendments five and fourteen) safeguard private property against a taking for public use without just compensation, neither Nation nor State may require the use of privately owned property without just compensation. When the property itself is taken by the exertion of the power of eminent domain, just compensation is its value at the time of the taking. So, where by legislation prescribing rates or charges the use of the property is taken, just compensation assured by these constitutional provisions is a reasonable rate of return upon that value."

At the outset it is recognized that there may be a taking of property for which compensation is not immediately made. However, where the compensation is postponed, it is held that the legislature itself must provide for the ascertainment of the amount of the compensation and must in some way guarantee its payment.

Thus, in *Bloodgood v. Mohawk & Hudson Railroad Company*, 18 Went. (N. Y.) 9, 17 (1831), Chancellor Walworth held:

"But it certainly was not the intention of the framers of the constitution to authorize the property of a citizen to be taken and actually appropriated to the use of the public, and thus to compel him to trust to the future justice of the legislature to provide him a compensation therefor. The compensation must be either ascertained and paid to him before his property is thus appropriated, or an appropriate remedy must be provided and upon an adequate fund; whereby he may obtain such compensation through the medium of the courts of justice if those whose duty it is to make such compensation refuse to do so."

It has been held that no remedy or guarantee of payment is appropriate unless the credit of the political government which is taking the property is pledged to secure such payment.

In *Liberty Central Trust Co. v. Greenbrier College* (D. C. S. D. W. Va., 1931) 50 Fed. (2d) 424, 429, affirmed 283 U. S. 800 (1931), the Court said:

"Of course, the payment of the award must be insured, and it is held that the full faith and credit of the political division involved must be pledged to the payment. *Sweet v. Rechel*, 159 U. S. 401; 20 Corpus Juris, 651, 652."

Similarly, it has been held that a remedy which is limited to certain specified property is inadequate. Thus, in *Sage v. City of Brooklyn*, 89 N. Y. 189 (1882), 195-6, it was stated:

"It is, I think a plain proposition, that a law authorizing the taking of a man's land, and remitting him for his sole remedy for compensation to a fund to be obtained by taxation of certain specified lands in a limited district, according to benefits, is not a sure and adequate provision, dependent upon no 'hazard, casualty or contingency whatever', such as law and justice require to meet the constitutional requirement."

Manifestly, Section 310(e) does not conform to the constitutional standard of just compensation. It provides no fund for the guarantee of recoupment, no appropriate remedy for its collection, no enforceable right cognizable in courts of justice to compel payment. It does not pledge the credit of the Commonwealth of Pennsylvania or of any political government to the payment of the just compensation which recoupment is supposed to afford. It does not even provide any defined remedy,



and the utility is remitted for its payment to an undefined and presently anonymous group of individual consumers who in the future, when a permanent rate is fixed, may be on its lines. The utility is thus relegated to the doubtful financial responsibility of private corporations and individuals. This surely is not a guarantee of payment.

(2) *Even the limited rights of utilities to enforce payment are severely restricted, both by economic conditions and constitutional limitations.* To the extent that there is any such right, it is solely against future customers who, according to Section 310(e), are to repay the utility a portion of the loss suffered by reason of compulsory benefits to previous consumers. However, these future consumers cannot be compelled to make good the loss. Economic conditions at the time recoupment is to be had may be such as to reduce normal consumption. There is no power on earth, legal or otherwise, which can compel customers to use a given amount of electricity, much less an amount which would be required to be used at the increased rate fixed in accordance with subparagraph (e). Clearly, the company has no right of action against them, nor any vested right whatever to the just compensation to which it is entitled.

Viewed from a legal standpoint, the plight of the utility is even worse. It is established by the record in this case (Appellee's Exhibit E, R. 1108-1111), and indeed it is an obvious fact, that customers change constantly. Presumably then, the increased rate to provide recoupment must be paid in part by those who never had the benefit of the low temporary rate. As a consequence, an order increasing the rates of these customers above a reasonable rate would be grossly

discriminatory. *Such an order would violate the provisions of Section 304\* of the Pennsylvania Public Utility Law itself, which expressly prohibits such discrimination.* Clearly, these customers who have thus been discriminated against would have a valid objection to the so-called recoupment rates. And if it be said that the Public Utility Law permits such discrimination, it is more than likely that such a law would be declared unconstitutional as depriving these customers of the equal protection of the laws by an unreasonable and unwarranted discrimination.

**In short, the utility has no vested right under Section 310 (e) against anyone, solvent or insolvent, named or anonymous, for the collection of the so-called recoupment, and to some extent at least such powers of collection as are granted to the utility are clearly invalid.**

This defect is not remedied by the Commission's argument that the Appellee cannot raise the question on behalf of the injured consumers. The Appellee is raising the question solely on its own behalf—since if the consumers can prevent the imposition of the recoupment rate, it is the Appellee who will be injured. It can never recoup.

(3) *The measure of recoupment provided by subparagraph (e) is limited solely to the difference between gross income obtained from the temporary rate and gross income which would have been obtained from the rates finally determined if applied during the period that the temporary order was in effect. This measure is wholly inadequate.*

No provision whatever is made for credit impairment resulting from the temporary confiscatory rate. No pro-

\* Printed in full in Appendix A hereof.

vision whatever is made for loss of ability to attract capital resulting from the temporary confiscatory rate. *Not even is there provision made for loss of interest on the return to which the utility was rightly entitled and of which it was deprived by the temporary rate.* Significantly, where the reimbursement is to be made by the utility, interest at the legal rate is specifically provided. Thus, under Section 313 of the Public Utility Law,\* if the Commission finds that a utility has been exacting an unreasonable rate, the utility may be required to refund the amount of any excess paid "together with interest at the legal rate from the date of each such excess payment." *Not only is there no provision for interest from the time of institution of confiscatory temporary rates until recoupment is awarded, but there is no provision for interest on the unamortized portion of the recoupment during the recoupment period.*

(4) Section 310(e) makes no provision for either the time or the rate of recoupment. This in itself makes recoupment wholly illusory. If a high rate of recoupment over a short period of time is provided for in the final rate order, this necessarily means that the rates to be charged during the period will be excessive. Such an excessive rate would discourage the use of electricity, and the result of the decreased use would be the yield of a smaller return than would be received at the normal or fair rate. There would result in this situation not only a decreased use, but a loss of customers as a result of competition. Particularly would this be true in the case of large power users, where the difference of a few mills per k. w. h. in energy costs is often sufficient to gain or lose a power contract and a power customer.

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\* Printed in full in Appendix A hereof.

The provision for recoupment, of course, does not undertake to compensate for such losses, which would be the direct, if delayed, result of "temporary" confiscation. Nor does Section 310 (e) suggest the manner in which the excess or recouping rates are to be allocated among the various classes of consumers. What proportion is to be borne by power users where the temporary rates have benefited domestic consumers? This is but one of a veritable flood of serious operating questions unanswered by subparagraph (e).

If, on the other hand, the period of the amortization of recoupment is lengthy and the rate small, this in itself may amount to confiscation. In *Smith v. Illinois Bell Tel. Co.*, 270 U. S. 587 (1926), the Court said, at page 591:

"\* \* \* Property may be as effectively taken by long-continued and unreasonable delay in putting an end to confiscatory rates as by an express affirmation of them; and where, in that respect, such a state of facts is disclosed as we have here, the injured public service company is not required indefinitely to await a decision of the rate-making tribunal before applying to a federal court for equitable relief."

Under Section 310(e), the order fixing the final rate must prescribe the amount of the recoupment and the period of amortization. The amount is thus fixed. Nevertheless, to the extent that this sum is not repaid at any time after the date of the final order, the confiscation continues, and for this new and added confiscation no remedy at all is afforded.

(5) No provisions are made for the fluctuations in the purchasing power of the dollar and thereby no consideration is given to, or allowance made for the difference in the purchasing value of money between the date of pre-

scription of temporary rates and the date of fixed permanent rates.

Because, therefore, Section 310(e) makes no guarantee or assurance of the payment of the limited recoupment provided for, because that recoupment is wholly inadequate, and because, finally, for the reasons above stated, even the limited and inadequate recoupment is wholly illusory, the provisions of Section 310(e) do not provide for just compensation in the future for a present taking of the utility's property. The provisions of Section 310(e) are therefore wholly insufficient to validate an otherwise confiscatory temporary rate order. As stated by the Supreme Court in *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U. S. 79, 83 (1935):

**"Present confiscation is not atoned for by merely holding out the hope of a better life to come."**

With respect to these unanswerable legal and practical arguments, the Commission's brief is silent. The Commission relies entirely upon the case of *Bronx Gas & Electric Company v. Maltbie*, 271 N. Y. 364 (1936). That case sustained the constitutionality of Section 114 of the New York Public Service Law, which provided for the imposition of a temporary rate sufficient to provide a return of not less than 5% on original cost less accrued depreciation, and authorized the Commission, in any proceeding in which temporary rates are fixed, to consider the effect of such rate in prescribing the rates thereafter to be charged on final determination of the rate proceeding. It was conceded by the Commission, and found by the Court, that the temporary rate under attack, had it any element of finality, would be confiscatory. It was

also conceded by the Court that because the elements in rate-making prescribed by the Supreme Court in *Smyth v. Ames*, *supra*, and thereafter were not considered in making a temporary rate, such rate, if final, would be unconstitutional and void. However, the Court construed the provision authorizing the Commission, in fixing a final rate, "to consider the effect" of the temporary rate, as making recoupment mandatory if the final rate were higher than the temporary rate, and as so construed, held that the provision for a future recoupment amounted to just compensation for property presently taken.

To the extent that this decision sustains a confiscatory temporary rate, or one fixed without regard to procedural due process of law, even if it provides for future recoupment, the Appellee submits it is plainly not good law. This is true first, because it justifies the substitution of expediency for the fundamental principles of justice and law, and second, because as a matter of expediency, it is unsound, in that it sacrifices the important interests of society in the proper and efficient functioning of persons and corporations engaged in supplying a public necessity, to the temporary and superficial expediency and convenience of regulatory commissions.

In view of the serious injury which may be caused to the utility by even a temporary confiscation of its property; and in view of *the even more serious injury which may be caused to constitutional democracy by the approval of a deliberate disregard of constitutional rights*, we submit that the superficial convenience of administrative bodies should not thus be served. The Appellee believes it perfectly possible for a realistic Commission to regulate the rates of utility companies with-



out depriving them of their legal rights. The instant case itself shows no necessity for a disregard of these legal rights. Commission's counsel has conceded that no effort was made to impede or prolong the rate proceeding. It was neither long nor particularly involved. Indeed, when the first-rate order was made the Commission had all the evidence before it on which it could issue a final order.

Moreover, the *Bronx Gas* case presented a situation materially different than the instant case. There a statute, which was very broad and equally vague, was construed by the highest court of the state as making full and complete recoupment mandatory. This construction, of course, was the final judicial word upon the meaning of that recoupment provision. In the instant case we have a more limited and more specific provision. It has not been construed by the highest court of Pennsylvania. Taken as it stands, it clearly does not provide full and complete recoupment for the reasons outlined above. As a consequence, it cannot be assumed that complete recoupment will be afforded. On the contrary, in view of the limited powers of the Commission, it must be held that such recoupment cannot be afforded. For these reasons, we submit that the *Bronx Gas* case, even if it were sound law, would not justify a similar holding here, and that for the reasons heretofore discussed, the provisions of Section 310(e) are wholly inadequate to validate the otherwise unconstitutional provisions of Section 310(a) and (b).

## POINT III.

**THE ORDER OF THE COMMISSION CONTRAVENES THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION BECAUSE IT IS BASED ON FINDINGS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND BECAUSE THE RATES IMPOSED BY IT ARE CONFISCATORY.**

## A.

THE COMMISSION DEPRIVED THE APPELLEE OF THE ESSENTIAL REQUIREMENTS OF PROCEDURAL DUE PROCESS OF LAW.

Numerous decisions of this Court enunciate the well established principle that in a rate proceeding a public utility is entitled to a fair hearing, an opportunity to introduce evidence, and a judgment according to the evidence. It is also settled law that a utility is entitled to earn a fair return on the fair value of its property used and useful in the public service, and that among the elements which must be considered in a determination of fair value are reproduction cost new, reproduction cost new less accrued depreciation, original cost, going concern value and working capital. *Smyth v. Ames*; *St. Louis & O'Fallon R. Co. v. United States*; *Los Angeles Gas & Electric Corp. v. Railroad Comm.*; *West v. Chesapeake & Potomac Tel. Co. and Railroad Comm. of Cal. v. Pacific G. & E. Co.* (all *supra*).

Not only must the foregoing elements be considered in a determination of fair value, but the record must disclose substantial evidence to support such determination. Likewise the record must exhibit the facts relied upon by the Commission to disregard or ignore unimpeached evidence submitted by the Company. In *West*

*Ohio Gas Co. v. Ohio Public Utilities Comm.*, *supra*, the Court, at pages 68-69, said:

"To make such review [referring to a judicial review of an order of the Ohio Commission] adequate the record must exhibit in some way the facts relied upon by the court to repel unimpeached evidence submitted for the company. If that were not so, a complainant would be helpless, for the inference could always be possible that the court and the commission had drawn upon undisclosed sources of information unavailable to others. *A hearing is not judicial, at least in any adequate sense, unless the evidence can be shown.*"

To the same effect is *Ohio Utilities Co. v. Ohio Public Utilities Commission*, *supra*, and the more recent *Railroad Comm. v. Pacific Gas & Electric Co.*, 302 U. S. 388, (1938), in which this Court, in its opinion, said:

"In the instant case, we cannot say that the commission in taking historical cost as the rate base was making a finding without evidence and therefore arbitrary.

"The decisions cited by respondent do not require a different conclusion. In *Northern Pacific Railway Company v. Department of Public Works*, 268 U. S. 39, 43-45, we said that the commission's action in reducing rates by an order dependent wholly 'upon a finding made without evidence' or 'upon a finding made upon evidence which clearly does not support it' in the face of unchallenged evidence of probative value showing that the rates were already confiscatory was an arbitrary act and a denial of due process."

Having in mind the established law, it is clear from an analysis of the testimony and evidence constituting the record in the instant case that the Commission not

only failed to give consideration to certain "necessary elements of fair value, but that it relied upon and adopted evidence having no probative value in preference to substantial and unimpeached evidence submitted by the Appellee. The following discussion relating to the various elements of fair value will demonstrate this fact.

Present Cost of Construction.

The testimony and exhibits introduced by the Appellee relating to the present cost of construction of its property, were based upon a physical examination and count in the field of the actual units of property in place and classified in accordance with their appropriate account numbers or classification, as designated by the Uniform Classification of Accounts prescribed by the Commission (R. 492-494).

The estimate of the reproduction cost new as of November 30, 1936 was \$5,572,134 and the estimate of the reproduction cost new less accrued depreciation as of the same date was \$4,950,609 (R. 629). Subsequently, such estimates were revised by translating them into prices prevailing as of June 1, 1937 to show the extent to which the original estimates had been affected by rising prices between November 30, 1936 and a date more nearly coincident with the termination of the rate proceeding. The revised estimate of reproduction cost new as of June 1, 1937, was \$6,019,832 and the revised estimate of depreciated reproduction cost as of the same date was approximately \$5,350,000 (Appellee Exhibit 18, R. 1030). The uncontradicted evidence in the record further discloses that between November 30, 1936 and September 30, 1937, Appellee constructed net additions to its plant and property at an actual cost to it of \$142,851.07 (Appellee's Exhibit 22, R. 1037-1038).

The Commission, *electing to ignore the uncontradicted evidence of the Appellee with respect to the increase in the reproduction cost of its property between November 30, 1936 and June 1, 1937, and further to ignore the aforementioned expenditure by appellee of \$142,851 for net additions between November 30, 1936 and September 30, 1937*, found in its order that the reproduction cost new of appellee's property was \$5,293,064, and that the depreciated reproduction cost was \$4,737,803 (R. 21, 28-29). This arbitrary reduction in the estimated reproduction cost of the property of Appellee as of November 30, 1936, was based solely on a reduction of \$212,807 in the property embraced within the accounts covering general overheads, a reduction supported only by the testimony of L. C. Bierman, a member of the engineering staff of the Commission (R. 215-231, 293-297).

Before pointing out that there is no proper basis for such a reduction in general overheads, the Court's attention is respectfully addressed to its decision in *McCarty v. Indianapolis Water Company*, 302 U. S. 419 (1938), wherein it was held that a valuation based on prices as of 1933 was invalid to support a finding of value as of 1935. Hence, it follows that the action of the Commission in refusing to recognize an actual increase in prices between November 30, 1936 and June 1, 1937, as well as its refusal to make any allowance for actual net additions to property between November 30, 1936 and September 30, 1937, is arbitrary and unlawful.

The aforementioned reduction in general overheads is unsupported by substantial evidence. Commission's witness Bierman testified (R. 457, 958) that he *had not made a personal inspection or appraisal of Ap-*

peltee's property and had formed no independent opinion as to its reproduction cost. Thus the witness sought to determine the proper overheads to be added to the reproduction cost of the physical property without any actual knowledge of such property or judgment as to its reproduction cost. Clearly, such testimony cannot be regarded as "substantial evidence", and the Commission in accepting it in lieu of that of witnesses for the Appellee made precisely the same sort of error as that of the Ohio Commission in *Ohio Utilities Co. v. Ohio P. U. C.*, *supra*, which was condemned by this Court.

It is true that the Commission endeavored to find support for this arbitrary treatment of general overheads by reference in its order (R. 20-21) to the opinions of the Superior Court of Pennsylvania in *Chambersburg Gas Co. v. Public Service Commission*, *supra*, and *Cheltenham & Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252 (1936). These cases involved two small public utilities, one a gas and the other a sewerage company, wherein the Court happened to approve smaller allowances for general overheads than the Commission has allowed Appellee in the instant case. It is obvious, however, that overheads of a small gas company or a sewerage company can not be applicable to an electric company. Such a reasoning plainly ignores the evidence in the instant case. Clearly the allowances appropriate for such overheads are not to be determined by a formula or a rule of thumb, but are governed by evidence of the circumstances relating to the particular inquiry in question, such as the time of the construction, the experience of the particular utility and the value of its property. Complainant's evidence is the only such evidence in this case. To reject it is to "repeal unimpeached evidence



submitted for the Company." *West Ohio Gas Co. v. Ohio Public Utilities Commission, supra.*

That the determination of overheads is not a matter of formula but one dependent upon the facts and circumstances in the particular case is recognized by the American Society of Civil Engineers at page 1562 (Appendix III) of a document entitled "Report of the Special Committee" of that body, wherein, during the course of a discussion relating to such overheads, it is observed:

"In presenting these data as to actual overhead costs, the Committee desires to lay stress on the need of using all such figures with caution. Items entering into overhead cost of different and similar works are rarely alike, and many of the expenses, and even classes of expense incurred on one piece of work, might not be incurred on another."

There is nothing in the record herein, including the Commission's opinion, to indicate the slightest similarity between indirect costs which would be incurred in the reproduction of Appellee's property and those incurred by the aforementioned gas company or sewerage company. The adoption of the overheads approved by the Superior Court of Pennsylvania in the instances relating to the two last mentioned companies as a proper allowance for the Appellee is a finding unsupported by logic or valid reason.

From all of the foregoing it is submitted that there is no substantial evidence to justify the action of the Commission in reducing by the sum of \$212,807 the Appellee's estimate of the reproduction cost new of its property as of November 30, 1936, or in further reducing by the same sum the Appellee's estimate of the depreciated reproduction cost of its property, where the only

basis for such reduction is the testimony of a witness who has never inspected the property or formed any independent judgment as to its value. Furthermore, in its findings with respect to reproduction cost, the Commission has failed to give *any* consideration to (1) net additions to Appellee's property, and (2) the reproduction cost of such property as of a date substantially coincident to the date of its order.

It follows that the estimates of the reproduction cost of the property of Appellee, as submitted in its behalf, should have been adopted by the Commission and that there is no substantial evidence to support the Commission's finding of reproduction cost.

The Commission, in its brief, attempts to support this arbitrary action by a combination of inaccurate statements and erroneous conclusions. First it states at page 58, that additional deductions for depreciation from November 30, 1936 to September 30, 1937 would equal the net additions. It then states at page 59, that the reproduction cost estimate revised to include changes in prices to May 31, 1937 made no deductions for depreciation—and further that the Appellee still regarded \$5,500,000 as the fair value of its property.

These claims are most misleading. Assuming that the increase in the reproduction cost estimate, due to net additions to the Appellee's property, is counterbalanced by additional deductions for depreciation, it is still true that the Commission's finding of depreciated reproduction cost wholly fails to give effect to increases in prices from the date of the Appellee's original reproduction cost estimate (November 30, 1936) and a date near the termination of hearings (May 31, 1937). The original

estimate of reproduction cost new as of November 30, 1936 was approximately \$5,570,000 (R. 1020). The estimate based on prices as of May 31, 1937 was approximately \$6,000,000, an increase of \$430,000 (R. 1030). Applying this increase to the estimate of depreciated reproduction cost as of November 30, 1936 of \$4,950,000, we find that a reasonable estimate of depreciated reproduction cost (eliminating both net additions and the equivalent deductions for additional depreciation) is \$5,380,000. Even if we deduct from this figure that portion of the allowances for general overheads which was eliminated by the Commission, the estimate is \$5,168,000. This figure is more than \$430,000 in excess of the Commission's finding of depreciated reproduction cost of \$4,737,803.

It is not true that the Appellee claimed a fair value of only \$5,500,000. No such claim was made in the complaint. The affidavits referred to by the Commission stated that the fair value was not less than \$5,500,000, and that proper consideration of additional factors, such as net additions, would increase this figure (R. 4-57).

#### Original Cost.

The estimate of the original cost of the property of Appellee used and useful in its public service as of November 30, 1936, was \$4,969,000. This amount has been increased by the aforementioned net additions from November 30, 1936 to June 30, 1937 in the sum of \$142,851.07. For the purpose of determining such estimate of original cost, the actual costs of materials and labor experienced by the company, as of the respective dates of installation, were adopted and the same applied to the inventory of Appellee's property as of November 30, 1936. In such instances where the books failed to disclose such

actually experienced costs, prices of materials prevailing as of the particular dates of installation, and prevailing costs of labor in York, Pennsylvania as of the date of such installations, were applied (R. 492-493, 504-512, 517-527, 544-548).

In its order, the Commission, in making its determination of the original cost of the property of Appellee, accepted substantially its estimate, as of November 30, 1936, less an item therein in the sum of \$349,880 for cost of financing. *The Commission then further deducted the sum of \$506,000, representing purported depreciation and arbitrarily refused to make any allowance for the aforementioned net additions* (R. 23).

The Commission eliminated the item of cost of financing, on the theory that "respondent's evidence nowhere indicates that any studies were ever made of such cost" (R. 22). In this the Commission erred. The estimate for this item was based, among other things, upon a study of Appellee's experience. Reference to Appellee Exhibit No. 1 (R. 1017), which includes a chart portraying the cost of money experienced by York Railways Company (the parent of complainant), from 1909 to 1925, and the distribution of the proceeds realized from the sale of its securities, demonstrates that \$2,407,175 was realized from the sale of 6% bonds in the principal amount of \$2,706,000, and that the aggregate discount was \$298,825. It is, therefore, apparent that the **experienced** cost of financing of Appellee's parent over the period in question and for the securities mentioned was something in excess of 11%, or approximately  $3\frac{1}{2}\%$  in excess of the estimate of the cost of financing included in Appellee's original estimate. The exhibit further shows that of the proceeds of \$2,407,000, the sum of \$1,027,000 was actually expended for construction of the property of Appellee. It is

inescapable that the cost of financing the Appellee, had it been required to raise its necessary capital requirements through the public sale of securities, would have been at least equivalent to that actually experienced by its parent in raising funds for the appellee. It is clear that during the years mentioned above, the parent company was a prosperous corporation with a far better credit standing than that of Appellee, and that during the earlier years its business was less speculative in character than that of Appellee.

The Commission's action, therefore, in disallowing known cost of financing and failing to make any allowance for undisputed net additions, was erroneous. There remains for consideration the propriety of its action in depreciating original cost.

No attempt was made by Appellee to depreciate the original cost of its property, because such cost represents the actual investment made by Appellee and is not subject to depreciation. Even though the property should ultimately disappear, the amount originally expended to create it would remain the same. Hence, there is no computation that can be made which would indicate that the amount of the **investment** is at any time less than that originally put into the property.

The Commission's action in depreciating original cost is also inconsistent with the position taken in its brief that prudent original cost should replace fair value as the constitutional standard of rate-making. If such original cost, as distinguished from value, is used as the rate base, it must be on the theory that the owners of a utility are constitutionally entitled to a return on the money pro-

dently invested by the first owners of the business. This amount can never depreciate, and any attempt to reduce it by depreciation would, under the Commission's own argument, deprive the present owners of their property without just compensation. (See opinion of Brandeis, J., in the *Southwestern Bell Telephone Case*, *supra*.)

In attempting to make a computation of depreciated original cost however, the Commission applied a percentage to Appellee's original cost estimate equal to the average of depreciation as determined in the latter's reproduction cost estimate (R. 23). Appellee's accrued depreciation amounted to \$621,524, which happened to be 11% of the estimated reproduction cost new. This percentage was merely the weighted average of the depreciation, as determined for the various units of property. The Commission, for the purpose of determining the so-called depreciation of original cost, deducted from such cost a sum equivalent to 11% thereof. Such a computation is clearly erroneous, not only because original cost cannot be depreciated but for the further reason that the property of Appellee was built over a long period of time at various price levels. The accrued depreciation for the reproduction cost which produced the weighted average of 11% was, on the other hand, based upon an established price level, and hence the use of that percentage in connection with original cost is fallacious.

By way of illustration of this erroneous computation, property embraced within two account classifications "General Office Structures", Account No. 278, and "Other General Structures", Account No. 279, may be taken as examples. The weighted average depreciation for the property in these two accounts in Appellee's Exhibit No. 9 (R. 1021) (being the estimate of re-



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production cost new) is 12.3%. If the same percentages of depreciation, forming a part of the weighted average, is applied to the same two accounts in the original cost estimate, the weighted average of depreciation would become 13.5%, thus demonstrating the fallacy of the Commission's application of the percentages of depreciation derived in connection with reproduction cost estimates, to original cost.\* If the comparison had been based on individual units of property instead of whole accounts, the disparity would be even greater.

In further considering the manifest impropriety of the Commission's action in depreciating original cost, it should be said that there is not only an absence of *substantial* evidence, but there is *no* evidence in the record dealing with *any* suggested method of depreciating such cost. This lack of evidence is no doubt due to the

\* It will be noted from the following computation that if the percentages of depreciation derived from the relation of the amounts of accrued depreciation to the amounts of reproduction cost new of both accounts are applied to the amounts of original cost in both accounts, the resulting product of so-called depreciated original cost aggregates a sum equal to 13.5% of the original cost of the property in the accounts, whereas the weighted average of actually accrued depreciation, applying to the reproduction cost new, is only 12.3%.

	Reproduction Cost New <sup>1</sup>	Accrued Depreciation <sup>1</sup>	Percentage of Depreciation
Acct. 278 .....	110,505	16,576	15
Acct. 279 .....	62,378	4,783	7.6
Total .....	173,083	21,359	12.3
	Original Cost <sup>2</sup>	Percentage of Depreciation	Accrued Depreciation
Acct. 278 .....	93,724	15	14,054
Acct. 279 .....	24,121	7.6	1,833
Total .....	117,845	13.5	15,887

<sup>1</sup> As appears by Company Exhibit No. 8.

<sup>2</sup> As appears by Company Exhibit No. 9.

recognition by the Commission's engineers, as well as Appellee's, of the obvious fallacy of any such attempted depreciation. Whatever may be the reason, the fact remains that any finding as to the depreciation to be deducted from the original cost is **a finding without evidence.**

Finally, it should be said that not a single authority can be cited among the many opinions of this Court approving this attempt to depreciate original cost. The Commission's action in so doing is manifestly unlawful and constitutes a method of fixing rates which violates the procedural due process guaranteed by the federal constitution. *West v. Chesapeake & Potomac Tel. Co., supra.*

#### Going Concern Value.

The Appellee contended that, in a proper determination of the fair value of its property, it was entitled to an allowance for going concern value in the sum of not less than \$400,000. Appellee's witness Seelye, in reviewing the factors considered in arriving at this judgment figure, testified he considered (1) the character of the territory served by the company, including the wide diversity of industries represented therein (2) the sound economic record of the territory served (3) the ability of the company to earn a reasonable return under low rates (4) the efficiency of the management of the company as indicated by the condition of its property and the high character of its service (5) an adequate available power supply and (6) the sound capital structure of the company, as indicated by its low capitalization and the absence of funded debt (R. 793-796). It is submitted that such factors are relevant and necessary to a proper determination of an al-

lowance for going concern value. *Bluefield Co. v. P. S. C.*, *supra*; *Des Moines Gas Co. v. City of Des Moines*, *supra*.

To refute the above testimony the Commission offered **no evidence whatever** of going concern value other than a rather futile attempt to determine the so-called lag in the earnings of the Appellee in the early years of its existence.\* For this purpose the Commission assumed that 6% was a fair rate of return as far back as 1886 and thereby attempted to show that when the Appellee's predecessors originally commenced business, there was no lag in earnings except in instances where their net annual return was less than 6% (Commission Exhibit No. 24, R. 235-265, 412-423). This, of course, is preposterous. No public utility could have existed in 1886 on a return as low as 6%, and even as late as 1933 the Pennsylvania Public Service Commission itself allowed a rate of return of 7%. However, the witness sponsoring this amazing contention admitted that even his treatment showed a lag in earnings, *the amount of which he did not and could not compute* (R. 418).

A conception of going concern value based entirely upon this so-called lag is completely at variance with the definition and elements thereof contained in a

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\* The Pennsylvania cases on the subject hold that lag in earnings is one of the elements making up going concern value. In *Borough of Hanover v. Hanover Sewer Company*, 231 Pa. 95, the Court stated that lag was to be considered in connection with other matters. And in *Ben Aron Borough v. Ohio Valley Water Co.*, 68 Pa. Superior Ct. 561 (1917), the Court stated at page 587:

"The time and money expended in the promotion of the enterprise, the cost of securing and retaining customers, the loss of earnings on a reasonably well developed plant during its initial years, when its business is being built up, the increased value which comes from the consolidation of separate plants into one concern, these items, *with the value that inheres in a plant with its business established*, may be termed going concern cost of value."

long line of decisions of this Court. The gist of these decisions is admirably stated in the opinion in *Des Moines Gas Co. v. City of Des Moines, supra*, wherein this Court stated, at page 165:

"That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned, although dedicated to public use."

In the light of these decisions it cannot be contended that, by offering one fragmentary and wholly erroneous exhibit concerning a so-called lag in earnings, the Commission produced **substantial evidence** that there was no going concern value applicable to the temporary rate base of the Appellee or that the figure for going concern value was anything less than the eminently fair and reasonable estimate of the Appellee, namely, \$400,000.

The Commission, although stating that it considered going concern value in arriving at its estimate of fair value in fact made no allowance for this item (R. 24-27, 28-29), as is apparent from the three following computations:

- (i) The estimated original cost of Appellee's property devoted to the public service, as of September 30, 1937, was \$5,111,851. For working capital the Commission properly found \$164,000, so that the resultant total is \$5,275,851, *with nothing included therein for going concern value.*
- (ii) The estimated depreciated reproduction cost of Appellee's property as of June 30, 1937 was \$5,-

350,000, to which should be added the Commission's allowance for working capital, producing a result of \$5,514,000, *with nothing included therein for going concern value or net additions.*

- (iii) The mean estimate (i. e. allowing equal weight to each of *reproduction and original cost*) to which should be added the Commission's allowance for working capital, produces a result of \$5,394,925. *with nothing included therein for going concern value.*

It is respectfully submitted that there is no substantial evidence to justify such exclusion of *going concern value* in a determination of fair value and, further, that the Commission has arbitrarily and again repealed "unimpeached evidence submitted for the company" (*West Ohio Gas Co. v. P. U. C., supra*).

We submit that the Commission has (i) reached a conclusion as to fair value without substantial evidence to support the same, (ii) arbitrarily disregarded unimpeached evidence offered by Appellee, and (iii) adopted methods for determining the basis for the prescription of temporary rates which are repugnant to well established legal principles, all in violation of the requirements of due process of law.

### Rate of Return.

It has been consistently held that the minimum of a fair return on value varies with the circumstances (*Dayton-Goose Creek Ry. v. Commission*, 263 U. S. 456 (1924)), and hence must be determined after a consideration of the facts developed by the evidence in each particular case. There are, however, decisions of this Court setting forth some of the controlling principles by which regulatory bodies must determine a fair rate of return.



In *Bluefield Company v. Public Service Commission*, *supra*, at 692-693, it was said:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprise or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

See also:

*United Railways v. West*, *supra* (1930).

Mr. Justice Brandeis in his concurring opinion in *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri*, *supra*, at pp. 290-291, said:

"The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. . . . The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. Cost includes not only operating expenses, but also capital charges. Capital charges cover the allowance by way of interest, for the use of the capital, what-

ever the nature of the security issued therefor; the allowance for risk incurred; and enough more to attract capital. *The reasonable rate to be prescribed by a commission may allow an efficiently managed utility much more.*"

The Appellee introduced the testimony of Henry D. Boenning, an investment banker of Philadelphia, George H. Knutson, a public utility consultant with successful experience as an executive of operating public utilities, and Dr. Frank Parker, professor of political economy at the Wharton School of Finance of the University of Pennsylvania.

Mr. Boenning's testimony is contained on pages 1042 to 1068 of the Supreme Court Record. It is apparent therefrom that the witness has had an extended and successful experience in connection with the distribution and sale of securities of public utilities, particularly those engaged in business in the Commonwealth of Pennsylvania. The witness was interrogated as to the actual cost which would be experienced by Appellee in raising capital in the amount of \$5,250,000 (fair value as found by Commission) or \$5,500,000 (**minimum** fair value claimed by Appellee) to be expended for the purpose of reproducing the present property of Appellee devoted to the public service. The witness was further questioned as to the annual net revenue (*i. e.*, operating income) which, in his opinion, would be required to support a capitalization in either of the two last mentioned principal sums.

In reply to questions of the above character, Mr. Boenning testified that he was familiar with the earnings of the Appellee for the past three calendar years and with its balance sheet as of September 30, 1937. He further

stated that Appellee would require an annual operating income of \$409,300 to support a capitalization of \$5,250,000 which is equivalent to a return of 7.8% and an annual operating income of \$432,650 to support a capitalization of \$5,500,000 which is equivalent to a return of 7.88% (R. 1053).

• It is clear from the record that the witness did not concern himself, in expressing these opinions, with a mere *academic* discussion of the return required by Appellee but, on the contrary, gave in detail the reasons which would require Appellee to earn the return he suggested in order to attract its required capital. Among the relevant factors which Mr. Boenning considered, in addition to his aforementioned knowledge of Appellee's property and affairs, were (a) the yields on shares of stocks and bonds of comparable public utilities as disclosed by current market quotations, (R: 1046, 1047); (b) recent offerings and sales of securities by various public utility companies, (R. 1049-1051); and (c) the costly effect upon Pennsylvania utilities in acquiring capital as a result of the policies and activities of the National Administration and of the Commission (R. 1056-1057).

Appellee's witness, Mr. Knutson, testified that, based on his long experience as a public utility executive and consultant to various financial institutions and utilities, Appellee would require "a minimum of 8%" under existing conditions (R. 1071). The factors considered by him in reaching this conclusion included (a) the history of Appellee; (b) its immediate capital requirements; (c) the value and condition of its property; (d) prevailing cost of money; (e) state of mind of the investing public with respect to securities of pub-

lie utilities as a result of the policies of the National Administration and the Commission; and (f) various considerations relating to the territory, business and affairs of the Appellee. In support of his position, the witness quoted from numerous recognized and reputable publications of statistical organizations containing comments, *inter alia*, on the disadvantages inuring to Pennsylvania utilities as a result of the activities and practices of the Commission, including such generally accepted and highly regarded organizations as "Standard Statistics" (R. 1071-1080). It is respectfully submitted that Mr. Knutson fairly and fully developed the practical problems confronting Appellee, under prevailing conditions, in raising the capital necessary to render its public service and that his testimony complemented and supported that of Mr. Boenning.

The testimony of Appellee's witness, Dr. Parker, related in part to the present trend of prices of commodities in the United States and demonstrated, without contradiction, that such trend has been upward since 1933 without any present indication of a recession therein. The witness further cited pending legislation and policies of the National Administration tending to produce inflationary results and higher prices (R. 1089-1105). In presenting this testimony of Dr. Parker, the Appellee gave heed to the principle enunciated and consistently adhered to by this Court, that rates are fixed for the future: *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri*, *supra*; *McCardle v. Indianapolis Water Co.*, 272 U. S. 407 (1926); *Love v. Atchison T. & S. Fe Ry. Co.*, *supra*; *Municipal Gas Co. v. P. S. C.*, 225 N. Y. 89 (1918).

In the *McCardle* case (*supra*), the Court stated at page 408:

"But in determining present value, consideration must be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. In every confiscation case, the future as well as the present must be regarded. It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future. *S. W. Tel. Co. v. Pub. Serv. Comm.*, 262 U. S. 276, 287, 288; *Bluefield Co. v. Pub. Serv. Comm.*, 262 U. S. 679, 692. Cf. *Board of Utility Commissioners v. New York Telephone Co.*, 271 U. S. 23, 31."

And in the *Missouri ex rel. Southwestern Bell Telephone Company* case (*supra*), the Court succinctly stated at pages 288-289:

"It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for tomorrow can not ignore prices of today."

Despite this uncontradicted testimony, the Commission restricted Appellee to a rate of return of 6% on its finding of the alleged fair value of Appellee's property (R. 30). The only evidence adduced by the Commission dealing with rate of return is that of the witness McShea, a member of its accounting staff, who contented himself with sponsoring an exhibit which dealt with yields on stocks of various corporations (industrials as well as utilities) not comparable to Appellee, and with rates at which corporate loans had been financed over a period of past years. It is inescapable that the Commission, in the instant case, has merely adopted the practice of its predecessors (the Pennsylvania Public Service Commission) in prescribing a rate of return **uniform for all utilities and without reference to the circumstances relating to the subject of the particular inquiry.** Such action is not only inimical to the doctrine declared in the above-quoted opinions of this Court, but is contrary to the admonition of the Pennsylvania Superior Court in *Pennsylvania Power & Light Co. v. Public Service Commission, et al.*, 128 Pa. Superior Ct. 195 (1937), wherein the Court stated at page 213:

"The commission erred first in arbitrarily fixing the same rate for all utilities and, second, in fixing the rate without consideration of the risks and uncertainties involved. When the former commission based the allowable rate of return on a former resolution and ignored the facts in the case, it not only did not act in compliance with law but made a wide departure from a legal course. The rates at which 'corporate loans are being currently refinanced' is not the criterion as clearly appears from the excerpts from the opinion of the Supreme Court of the United States. We do not need to look beyond the record to conclude that the



risks and hazards of the business of the respondent are much greater than those of a water company. *The rate allowable is a fact to be determined from the evidence like any other fact, and not by a standing resolution.*"

Thus there is found another illustration of a determination without substantial evidence or without facts in the record to justify impeaching relevant and substantial evidence adduced by Appellee. *West Ohio Gas Co. v. Ohio P. U. C., supra.*

It is submitted that the rate of return allowed the Appellee, in the opinion and order complained of, is contrary to all of the relevant evidence with respect to the proper rate of return to which Appellee is entitled.

#### Operating Expenses.

The Commission completely disallowed certain operating expenses actually incurred and paid by Appellee (R. 32).

(1) It has elected to disallow completely actual expenses incurred in connection with the very subject of this suit—rate case expense—despite the fact that (a) the proceedings were instituted on the Commission's own motion; (b) much of the data produced at the hearings was demanded of the Appellee by the Commission; (c) the Commission's previous temporary rate order was the subject of litigation costly to the Appellee and as a result of which the said order was enjoined; (d) no contention is made by the Commission that the amount of the rate case expense incurred is unreasonable or in any manner inflated; and (e) the Commission has assessed against and charged Appellee with the approximate sum of \$5,000 representing rate case expense *incurred by the Commission* in connection with said proceedings.

Authority for the necessity of an allowance for reasonable rate case expense can be found in *Wabash Valley Electric Co. v. Young*, 287 U. S. 488 (1933); *West Ohio Gas Co. v. Public Utilities Commission*, *supra* (citing with approval *Denver Union Stockyard Co. v. U. S.*, 57 Fed. (2d) 735, 753-764, D.C. D. Colo. 1932); *New York and Richmond Gas Co. v. Prendergast*, 10 Fed. (2d) 167, 181, 182 (D.C. E.D. N.Y. 1925); and *Monroe Gas Light & Fuel Co. v. Michigan Public Utilities Commission*, 11 Fed. (2d) 319, 325 (D.C. E.D. Mich. 1926).

The sole excuse given by the Commission (R. 32) for disallowing such expenses is that Appellee has been earning excessive rates. This excuse, even if it were true, is fully answered in *Newton v. Consolidated Gas Co. of New York*, 258 U. S. 165 (1922), wherein it is said at page 175:

"Since 1907 the Gas Company has been subject to supervision by a commission empowered to prohibit unreasonable rates, and the presumption is that any profits from its business were lawfully acquired."

and by the further opinion of this Court in *Board of Public Utility Commissioners v. N. Y. Telephone Company*, 271 U. S. 23, 32, (1926), where it said:

"And the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations. *Profits of the past cannot be used to sustain confiscatory rates for the future.*"

Thus Appellee is faced with the astounding ruling of the Commission, that, in a determination of operating expenses necessary to be allowed in an ordered reduction of \$435,000 per annum in Appellee's annual gross revenues, no allowance will be made it for \$178,374.50

(R. 32, 35) of necessary and actual expenses admittedly incurred incident to the proper conduct of the rate proceedings.

(2) The Commission disallowed as an operating expense the sum of \$20,593 which Appellee is required to expend annually as a part of salaries paid to its employees and officers (R. 34) although the existence of such expense is conceded, and **not a scintilla of evidence has been adduced by the Commission questioning either the propriety or amount of such payment.** It is difficult to conceive of a more arbitrary action by a regulatory body than this refusal to make any allowance for such an actual and undisputed annual operating expense.

(3) The Commission, in calculating Appellee's gross revenues for the purpose of computing its ordered reduction of \$435,000, has refused to give any consideration to a loss in annual profit in the sum of \$15,000. Annual revenue in this sum resulted in the past from the sale of energy by Appellee to York Railways Company (R. 1018), the railway service of which latter is to be forthwith abandoned *pursuant to an order of the Commission.* Clearly, therefore, such profit in the sum of \$15,000 is completely wiped out and will not recur. This should have been recognized by the Commission in making its aforementioned computation, particularly since rates must be made for the future.

In view of the action of the Commission (i) in denying the Appellee any allowance for its rate case expense, (ii) in denying the Appellee any allowance for the aforementioned payments of salaries, and (iii) in refusing to exclude from Appellee's revenue the past revenues, which would accrue in the future, Appellee respectfully submits that the order complained of is wholly lacking in any substantial support in the evidence, and constitutes a denial of procedural due process of law.

THE ORDER OF THE COMMISSION CONFISCATES THE APPELLEE'S PROPERTY.

Summarizing what has been said herein, it is manifest that the Commission, in arriving at \$5,250,000 as the fair value of Appellee's property for the prescription of temporary rates, erred in the following respects:

(1) By deducting from Appellee's estimate of reproduction cost the sum of \$212,807, representing *general overheads*, where there was no competent testimony or evidence before the Commission justifying such deduction.

(2) By failing to give any consideration in its determination of *reproduction cost*, to the rise in prices of labor and materials between November 30, 1936 and June 1, 1937 in the sum of \$447,698.\*

(3) By failing to give any consideration in its determination of *reproduction cost* to the net additions to Appellee's plant and property between November 30, 1936 and September 30, 1937 at an actual cost of \$142,851.97\*

(4) By deducting from Appellee's estimate of *original cost* the sum of \$349,800, representing the amount included therein for cost of financing.

(5) By deducting from Appellee's estimate of *original cost* the sum of \$506,000, representing purported depreciation, despite the fact that there is *no* evidence in the record as to the manner in which original cost can be depreciated, nor is there any legal authority for such attempted depreciation. Furthermore, the method actually adopted by the Commission is **clearly fallacious**, even if it be assumed that original cost can be properly depreciated.

\* No evidence offered in contradiction of this item.

(6) By failing to give any consideration in its determination of *original cost* to the net additions to Appellee's plant and property between November 30, 1936 and September 30, 1937 at an actual cost of \$142,851.07.\*

(7) By failing to make any allowance for going concern value in its determination of *fair value*.

Restoring the aforementioned improper deductions and omissions, and considering only the competent evidence before the Commission relating to the various elements of the fair value of Appellee's property as of the date nearest to the date of the challenged order, the following derivations of fair value result:

**Giving Predominant Weight to Reproduction Cost:**

Reproduction cost new less accrued depreciation, as of June 1, 1937.....	\$5,350,000
Net additions between November 30, 1936 and September 30, 1937, at cost, not included in preceding item.....	142,581
Working capital as allowed by Commission.....	164,000
Going Concern Value.....	400,000
<b>TOTAL.....</b>	<b>\$6,056,581</b>

**Giving Predominant Weight to Original Cost:**

Original cost as of November 30, 1936.....	\$4,969,000
Net additions between November 30, 1936 and September 30, 1937 at cost, not included in preceding item.....	142,581
Working capital as allowed by Commission.....	164,000
Going Concern Value.....	400,000
<b>TOTAL.....</b>	<b>\$5,675,581</b>

\* No evidence offered in contradiction of this item.

It becomes apparent that the Commission's finding of \$5,250,000 is clearly confiscatory. It is likewise apparent from uncontradicted testimony that the order of the Commission is being reviewed at a time when prices relating to wages and materials are rising; and hence it would follow that predominant weight *should be given* to depreciated reproduction cost in a determination of fair value. On this basis confiscation to the extent of approximately \$800,000 of Appellee's property results from the adoption of the Commission's rate base. Even if original cost were adopted as the sole measure of fair value the resulting confiscation would be approximately \$425,000. Assuming that equal weight or consideration should be given to depreciated reproduction cost and original cost, the result would be a finding of fair value in the sum of \$5,866,081 or *approximately \$616,000 in excess of the Commission's determination of the value of Appellee's property.*

In addition, however, to the above respects in which the order complained of is confiscatory, the following additional errors appear in said order:

(8) The refusal of the Commission to make any allowance to Appellee for its actually incurred rate case expense in the sum of \$178,374.50.\*

(9) The refusal of the Commission to make any allowance to Appellee for actual necessary payments to its officers and employees in the increased amount of \$20,593 per annum.\*

(10) The refusal of the Commission to make any allowance for actual loss in revenues in the annual sum of

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\* No evidence offered in contradiction of this item.



\$15,000 to be suffered by Appellee as a result of the ordered abandonment of service by York Railways Company.\*

(11) The refusal by the Commission to allow Appellee a rate of return of at least  $7\frac{1}{2}\%$ , in the light of the uncontradicted evidence that such a return is essential in order for Appellee to attract required capital and properly render its public service.

The Commission contends, at p. 57 of its brief, that the return allowed by its order is 6% on a rate base of \$6,408,330.16. But it neglects to state that the return excludes from operating expenses items which should have been included, fails to exclude non-recurring income, and that the rate applied (6%) is 2% lower than the necessary rate established by testimony of experts uncontradicted and unrefuted by any substantial evidence.

The confiscation resulting from these errors is obvious. Taking the most conservative estimate of \$5,866,081 as the fair value of Appellee's property, and an equally conservative rate of return of  $7\frac{1}{2}\%$ , we find a properly allowable return of \$439,956. This calculation takes the mean between the depreciated reproduction cost and the original cost of Appellee's property (despite the fact that due to rising price levels more weight should be given to the former) and also accepts the lowest rate of return testified to by any witness. Adding the foregoing return to the allowances made by the Commission for expenses, taxes and maintenance, we obtain an allowable gross revenue of \$1,822,785. The order of the Commission, however, allows a gross of only \$1,767,329.

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\* No evidence offered in contradiction of this item.

This is clear confiscation even before a consideration of the Commission's erroneous disallowance of admitted expenses. Such a consideration (including rate case expense amortized over a period of five years) increases the annual confiscation by over \$70,000. Indeed, even if we take original cost as the rate base, the amount of confiscation is reduced by only \$14,288.

This conclusion becomes even clearer upon an examination of the only real evidence in the record concerning the actual return necessary to permit the Appellee to finance itself and to attract necessary capital. The sole detailed testimony on this point is that of Appellee's witness Beenning. This witness, manifestly a man of wide experience in the raising of capital and in the sale and distribution of public utility securities, and one who was familiar with the operations of the Appellee for the past three years as well as the value of its property and its earnings and expenses, testified that he could finance an aggregate capitalization of \$5,500,000 for the Appellee only if the latter was guaranteed an annual operating income of \$432,650 (R. 1053). Even this, it must be noted, would not provide the additional return necessary to create a surplus for unknown contingencies which this Court has uniformly allowed. (See concurring opinion of Mr. Justice Brandeis in *Missouri, ex rel. Southwestern Bell Telephone Company vs. Public Service Commission of Missouri*, *supra*. Yet under the ordered rate reduction, the allowable return of the Appellee is reduced far below the minimum return which the record shows is necessary to support its capitalization alone.

Manifestly, the ordered rate reduction, in the totality of its consequences, is confiscatory and constitutes a clear

taking of Appellee's property without just compensation.

Because of all of the foregoing errors, Appellee respectfully submits that the enforcement of the order complained of will clearly result in a confiscation of its property in violation of the 14th Amendment to the Constitution of the United States and in violation of the Constitution of the Commonwealth of Pennsylvania.

### CONCLUSION.

It is respectfully submitted that Appellee has clearly demonstrated that the order complained of was made in violation of the terms of the statute; that the statute under which the order was purportedly made is manifestly unconstitutional; that the order was made without substantial evidence to support it and in disregard of uncontradicted evidence of probative value; and that the rates it imposes are confiscatory. The findings and conclusions of the District Court are amply sustained by the evidence, the facts, and the law, and its decree should be affirmed.

Respectfully submitted,

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## APPENDIX A.

### SECTIONS OF THE PUBLIC UTILITY LAW RELEVANT TO THE ISSUES INVOLVED IN THIS CASE.

Section 304. Discrimination in Rates.—No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. Unless specially authorized by the commission, no public utility shall make, demand, or receive any greater rate in the aggregate for the transportation of passengers or property of the same class, or for the transmission of any message or conversation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or any greater rate as a through rate than the aggregate of the intermediate rates. Nothing herein contained shall be deemed to prohibit the establishment of reasonable zone or group systems, or classifications of rates or, in the case of common carriers, the issuance of excursion, commutation, or other special tickets at special rates, or the granting of nontransferable free passes, or passes at a discount to any officer, employe, or pensioner of such common carrier. No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.

. . . . .

Section 307. Sliding Scale of Rates.—(a) Any public utility, except a common carrier, may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility as shall provide

a just and reasonable return on the fair value of the property used and useful in the public service, to be determined upon such equitable or reasonable basis as shall provide such fair return; Provided, That a tariff showing the scale of rates under such arrangement is first filed with the commission, and such tariff, and each rate set out therein, approved by it. The commission may revoke its approval at any time and fix other rates for any such public utility if, after notice and hearing, the commission finds the existing rates unjust or unreasonable.

(b) The commission, by regulation or order, upon reasonable notice and after hearing, may prescribe for any class of public utilities, except a common carrier, a mandatory system for the automatic adjustment of their rates, by means of a sliding scale of rates or other method, on the same basis as provided in paragraph (a), to become effective when and in the manner prescribed in such regulation or order. Every such public utility shall, within such time as shall be prescribed by the commission, file tariffs showing the rates established in accordance with such regulation or order.

. . . . .

Section 310. Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost less accrued depreciation, of such property, the commission may estimate such cost less



depreciation and fix, determine, and prescribe rates as hereinbefore provided.

(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions: Provided, That the commission, in determining the basis for temporary rates, may make such adjustments in the annual report data as may, in the judgment of the commission, be necessary and proper.

(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

(d) Whenever the commission, upon examination of any annual or other report, or of any papers, records, books, or documents, or of the property of any public utility, shall be of opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used and useful in its public service, the commission may, by order, prescribe for a trial period of at least six months, which trial period may be extended for one additional period of six months, such temporary rates to be observed by such public utility as, in the opinion of the commission, will produce a fair return upon such fair value, and the rates so prescribed shall become effective upon the date specified in the order of the commission. Such rates, so prescribed, shall become permanent at the end of such trial period, or extension thereof, unless at any time during such trial period, or extension thereof, the public utility involved shall complain to the commission that the rates so prescribed are unjust or unreasonable. Upon such complaint, the commission, after hearing, shall determine the issues involved, and pending final determination the rates so prescribed shall remain in effect.

(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the

rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

• • • • •

Section 313. Refunds.—(a) If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within two years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact. An appeal may be taken to the Superior Court from any refund order, but if no such appeal is taken, the parties shall be bound by the findings and orders of the commission.

(b) If the public utility fails to make refunds within the time for payment fixed by any final order of the commission, or any appellate court, as the case may be, any patron entitled to any refund may sue therefor in any court of common pleas of this Commonwealth, and the findings and order made by the commission shall be prima facie evidence of the facts therein stated, and that the amount awarded is justly due the plaintiff in such suit, and the defendant public utility shall not be per-

mitted to avail itself of the defense that the service was, in fact, rendered to the plaintiff at the rate contained in its tariffs in force at the time payment was made and received, nor shall the defendant public utility be permitted to avail itself of the defense that the rate was reasonable: Provided, That any patron entitled to any refund shall be entitled to recover, in addition to the amount of refund, a penalty of fifty per centum of the amount of such refund, together with all court costs and reasonable attorney fees. No suit may be maintained for a refund unless instituted within one year from the date of the order of the commission or its final affirmance by an appellate court. Any number of patrons entitled to such refund may join as plaintiffs and recover their several claims in a single action, in which action the court shall render a judgment severally for each plaintiff as his interest may appear.

(c) No action shall be brought in any court for a refund, unless and until the commission shall have determined that the rate in question was unjust or unreasonable, or in violation of any regulation or order of the commission, or in excess of the applicable rate contained in an existing and effective tariff, and then only to recover such refunds as may have been awarded and directed to be paid by the commission in such order.

. . . . .

**Section 502. Continuing Property Records.**—The commission may require any public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of such property units by definite reference to the specific land parcels upon which such units are located or stored; and the commission may require any public utility to keep accounts and records in such manner as to show, currently, the original cost of such property when first devoted to the

public service, and the reserve accumulated to provide for the depreciation thereof.

. . . . .

Section 1103. Supersedeas; Security.—No appeal from any order of the commission, except as hereinafter provided, shall, in any case, operate as a supersedeas of the order appealed from unless the Superior Court shall, by an interlocutory order, make such appeal a supersedeas. Such interlocutory order shall be made only after such notice to the commission and other parties of record as the court may direct, and after hearing. Upon the granting of a supersedeas in any case, the court may, in its discretion, require the filing of a bond to the Commonwealth for the use of all parties aggrieved, in such sum and conditioned as the court may, by its order, direct, or may grant the supersedeas upon such other terms and conditions as the court, in its discretion, may prescribe: Provided, That the effect of any such supersedeas shall be to continue in effect the temporary rates, if any, previously established in the proceeding by the commission.





## APPENDIX B.

THE COMMISSION'S EFFORT TO PERSUADE THIS COURT TO  
REVERSE THE DOCTRINE PRONOUNCED BY IT  
IN *SMYTH V. AMES*.

The Commission urges this Court to repudiate the principles enunciated by it in *Smyth v. Ames*, supra, defining what has been for more than forty years the basis for the determination of fair value in the prescription of rates of public utilities. Those principles, often repeated in a long line of subsequent decisions, are so well known to this Court that it is idle to restate them here.

*Willcox v. Consolidated Gas Co.*, 212 U. S. 19;

*Minnesota Rate Cases*, 230 U. S. 352;

*Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Serv. Commission*, 262 U. S. 276;

*Bluefield Waterworks & Improve. Co. v. Public Serv. Commission*, 262 U. S. 679;

*McCardle v. Indianapolis Water Co.*, 272 U. S. 400;

*St. Louis & O'Fallon R. Co. v. United States*, 279 U. S. 461;

*Los Angeles Gas and Electric Corp. v. Railroad Commission of the State of Calif.*, 289 U. S. 287;

*West, et al., v. C. & P. Telephone Co.*, 295 U. S. 662;

*Railroad Commission v. Pacific Gas & Electric Co.*, 302 U. S. 388.

In lieu of the fair value rule announced in those decisions, the Commission would have the reasonableness of rates determined solely by the allowance of a return on the "prudent original cost" of the property of the utility company involved.

## A.

Before replying to the substance of the arguments advanced in support of this proposal, Appellee respectfully submits that the Commission's contention cannot properly be raised at this time for the reasons that:

1. The question was not raised in the court below, the Commission asserting there and in its brief (p. 58) filed in this Court that, in prescribing the temporary rates to be charged by the Appellee, the Commission adhered to the doctrine of *Smyth v. Ames*.

2. The plain provisions of the Pennsylvania Public Utility Law recognizes the *fair value* rule (i. e. the doctrine of *Smyth v. Ames*) as the basis for the prescription of rates and the Commission is hence bound thereby.

1. In the answer filed by the Commission to the bill of complaint and during argument in the court below, it was never contended by the Commission, as it now urges, that the doctrine of *Smyth v. Ames* should be repudiated and consideration given only to original cost in determining the rate base of the Appellee. On the contrary, the Commission there argued that consideration must be given to the various elements of fair value, including reproduction cost as well as original cost, as is manifest from the following quotation from p. 10 of the brief filed by the Commission with the court below:

"The Supreme Court of the United States, in cases so numerous as to render citation thereof unnecessary, has established the principle that rates are non-confiscatory which provide a fair return upon the fair value of utility property used and useful in the public service. Respondents earnestly contend that Section

*310(a) of the Public Utility Law in nowise purports to allow or require the imposition of temporary rates in a manner inconsistent with the Supreme Court's interpretation of non-confiscatory regulation."*

In the same brief at pp. 31-37 will be found a discussion of the extent to which it was claimed the Commission considered the various elements of fair value. At p. 19 thereof, in construing the effect of subparagraph (e) of Section 310, the Commission said:

"Complainant has, at various times, raised the argument that Section 310(e) does not make an unconstitutional order constitutional. Nobody has ever claimed that it did. It was never intended to do so. Its clear intent is to assure full recoupment for any loss suffered by virtue of a *final constitutional rate being higher than a temporary constitutional rate.*"

From the foregoing it is inescapable that the position now taken by the Commission with respect to the rule of fair value is in direct contradiction of that which it urged upon the court below. Furthermore, a cursory examination of the record herein, including the Commission's opinion, discloses that the Commission did not limit its consideration to original cost in determining the rate base for the prescription of temporary rates. It is, therefore, apparent that in now urging the repudiation of the doctrine of fair value rule pronounced in *Smyth v. Ames*, the Commission raises merely an academic question, and one which has no proper place in a determination of the real issues involved in this case. It is a manifest effort here to inject a question which was not involved in the proceedings before the Commission, never discussed in its opinion and order, or even suggested by it during the trial or argument of the case before the court below.

It has been held that this Court, on appeal, will adhere to the theory of the case pursued in the trial court, and will not, as a rule, consider objections resting on a different theory than that upon which the appellant tried its case below.

*Denver Union Stockyard Co. v. U. S.*, 304 U. S. 470 (1938).

*Ohio v. Swift & Co.*, 260 U. S. 146 (1922).

*Virginian Ry. Co. v. Mullens*, 271 U. S. 220 (1926).

The Appellee, therefore, earnestly urges that the question raised is not properly before this Court.

2. Bearing in mind that the order here complained of was *purportedly* entered pursuant to statutory authority, it follows that the Commission is bound by all of the relevant provisions of that statute, and cannot properly be heard to argue against compliance with any of its valid provisions. The Appellee submits that the statute in question, as evidenced by reference to certain of its sections, clearly binds the Commission to compliance with the fair value rule in the prescription of (i) just and reasonable rates and (ii) permanent rates.

Section 307\* authorizes any public utility other than a common carrier to "establish a sliding scale of rates, or such other method for the automatic adjustment of the rates of the public utility as shall provide a *just and reasonable return on the fair value of the property used and useful in the public service*, to be determined upon such equitable or reasonable basis as shall provide such fair return."

Subparagraph (d) of Section 310 purportedly empowers the Commission to prescribe trial rates for designated periods provided "such temporary rates to be observed

\* Printed in full in Appendix A hereof.

by such public utility \* \* \* will produce a fair return upon such fair value \* \* \*."

These references to the Pennsylvania statute establish a clear and defined legislative intention to impose upon the Commission the duty of recognizing the rule of fair value in the prescription of rates on a sliding scale or trial rates.

Section 311,\* entitled "Valuation of Property of a Public Utility", is the sole grant of statutory authority to value the property of a utility. This requires valuation on the basis of **fair value**. It is specifically provided that the Commission shall

"\* \* \* ascertain and fix the *fair value* of the whole or any part of the property of any public utility, in so far as the same is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the *fair value* of all new construction, extensions and additions to the property of any public utility."

The Appellee submits, therefore, that the Pennsylvania Public Utility Law itself makes manifest a legislative recognition of the doctrine of fair value as defined by the law of the land at the time of the passage of the statute.\*\*

The Commission has only like powers granted by the Public Utility Law. If the legislature had intended to prescribe "prudent original costs" as the sole measure for the determination of a rate base, it is reasonable to assume that the statute would so provide. The fact is, that *there is no such provision*, and that except for temporary rates, the fair value basis is the *only* one having legislative sanction. The Commission, therefore, is not

\* Printed in full in Appendix A hereof.

\*\* Enacted May 28, 1937, effective June 1, 1937.

merely attempting to interject a new question, but it is asking this Court to declare a principle contrary to the Commission's charter of authority. It is, in effect, not only asking the Court to determine a moot question but is also attacking the very statute committed to it for administration.

### B.

Without reference to the propriety of the effort by the Commission to raise a new issue on appeal and to argue a proposition which is clearly repugnant to the statute pursuant to which the Commission is required to act, we submit that the Commission's contention is fundamentally unsound.

At the outset it is important to consider the nature and effect of this contention. The entire constitutional theory of rates has its fundamental basis in the principle that due process of law requires the payment of just compensation for the taking of property for a public use. In the case of a utility the taking of its property does not occur just once, when the property is originally constructed. On the contrary there is a constant taking of property every day by public regulation which prescribes the rates to be charged and controls the business and activities of the utility. Just compensation for any particular taking, then, must be determined as of the time of the particular taking involved—and to accomplish this *present value*, or *fair value*, must necessarily be considered the primary test.



The concepts of "cost", and "value", are entirely dissimilar. Cost and value are never synonymous, except accidentally.

It has never been argued that reproduction cost is the sole element of present value. Indeed, in cases involving taxation, condemnation, and other takings of property, fair value is determined by reference to market value, capitalization of earning power etc. In the case of a public utility, however, these methods cannot be applied. Being a monopoly a utility property seldom has a market value. Likewise, since the very purpose of the inquiry is to determine allowable earning power, that method cannot be used to determine value. Thus the reproduction or present cost estimate is in most cases the best, and in many cases the only, evidence of present value. But it is only a means to an end—not the end itself. The end has always been fair value.

In the light of these considerations, it becomes evident that the real effect of the Commission's position is to discard completely the whole concept of fair value. To read hastily the Commission's argument, it would seem that it merely asks this Court to change the rules of evidence. But when it is remembered that by rejecting present cost of construction we reject the *only* real evidence of *present cost*, (one of the essential elements in a proper determination of present *value*) it becomes obvious that the Commission is really asking this Court to declare that a utility is not entitled to a fair return on the fair **value** of its property—that the Constitution does not guarantee just compensation for the taking of property—but only a return on *past cost*.

With this understanding of the Commission's real contention, it is vital to the maintenance of constitu-

tional principles that this Court scrutinize with great care the practical aspects of the problem, to see if they justify such a reversal of the entire concept of due process of law as applied to the taking of property.

There is a fundamental reason that requires the consideration of present cost, as well as original cost, in a proper determination of fair value.

Original cost is an expression of the amount of dollars invested in a given property at the time of its original construction. Reproduction cost is but a translation of those dollars into a sum representing the cost of such property under prices prevailing at the time of the inquiry. That is to say, original cost is a summation of the dollars spent from day to day for the cost of the original installation or construction of the property when first devoted to the public use, and reproduction cost represents the sum by which those dollars have increased or decreased to reflect price levels prevailing as of the date of the determination of such reproduction cost. To fix rates solely on the basis of original cost is to completely ignore the difference between the purchasing power, in both materials and labor, of the dollars originally invested, and their value as of the date of the prescription of rates in a given proceeding.

The Commission's theory here advanced finds no support in the concurring opinion of Mr. Justice Brandeis in *Southwestern Bell Tel. Co. v. Public Service Commission of Missouri*, *supra*. The substance of that opinion is that a utility is entitled to earn a reasonable return on the "capital prudently invested in the enterprise." Such investment is far different than the Commission's hybrid "prudent original cost", for it embraces not only

sums expended in the actual *construction* of property when first devoted to public service, but also such sums as are prudently invested in the *acquisition* of properties constituting a part of the enterprise at the time of the particular rate inquiry. Such costs of acquisition inevitably reflect the value of the properties acquired as of the date of acquisition. Other capital "prudently invested in the enterprise" may likewise have been expended in costs incident to consolidations.

Many advocates of the prudent investment rule also support the principle that dollars, prudently spent in the enterprise, shall be translated into equivalent dollars of today, in order that justice shall thereby be done to the investor. Obviously, no such equitable consideration is contemplated or possible under a rule of law that would destroy the principle of *value* as a basis for the prescription of rates and substitute in lieu thereof, mere *cost*. Without elaborating further upon the difference between the school of thought that advocates prudent investment and that which urges a consideration of only original cost (i. e. cost of property when first devoted to the public service) as the basis for rate-making, it is submitted that the two are quite different in both their economic and legal approach.

It is also clear from the record that the "prudent investment" doctrine is a moot question in the instant case since it contains no evidence whatever of "prudent investment"—or of the total investment of *Appellee* in its property. Therefore, neither the validity of Section 310( )—which refers only to original cost of physical property when first devoted to public use—nor the adequacy of the rates prescribed by the Commission's order, can here be tested by the "prudent investment" standard.

It is urged by the Commission that an estimate of reproduction cost necessitates conjectural calculations.

The frailties in this regard, if such they are, which the Commission ascribes to an estimate of reproduction cost, may be likewise ascribed to estimates of original cost. As a matter of fact, there is less conjecture in the preparation of a reproduction cost estimate than there is in the determination of the actual original cost of property installed over a period of many years.

Reference to the record (R. pp. 492-493) makes manifest that the estimate of reproduction cost in the instant case was divided into two parts. The first dealt with the direct cost "which would be experienced by a contractor in carrying out the work" and the second dealt with "the overhead costs which are specifically what might be incurred by the owners of the property" and that such division of the estimate "is clearly indicated by the uniform classification of accounts (i. e. the uniform Accounting System prescribed by the Commission) and is based on every day experience." The evidence shows that the unit prices of materials were determined by obtaining prices from manufacturers and dealers, with full benefit given for discounts resulting from quantity purchase, and that labor costs were based upon the prevailing wage scale in the City of York, Pennsylvania and environs as of the date of the estimate. (R. 492-493, 504-512, 517-527, 544-548).

A study of such character is no more conjectural than any other engineering estimate involving the exercise of human judgment in the light of a known sets of facts. Clearly it is *less conjectural* than an effort to determine the original cost of a utility plant and system constructed

over a period of years at varying price levels. It is manifestly no more difficult to obtain and apply prevailing unit prices to a *known* and *existing* quantity of materials than it is, as required in an estimate of original cost, to determine prices prevailing as of a prior date and over a considerable period of time during which the units of property of a utility were originally installed or constructed.

The fact is, there is nothing theoretical involved in determining the reproduction cost of a utility plant or system. The amount of quantities involved can, as was done in this case, readily be ascertained by a competent engineer, and the prices of such materials are likewise available to be applied to such quantities, thereby determining the reproduction cost of the same. The amount of labor required in the particular task of reconstruction is one which can be properly estimated by an experienced contractor or engineer and, when the prevailing wage scale in the community involved is adopted, the result is a reasonably accurate estimate of what such labor would cost in that community and under conditions existing in the local labor market.

One is confronted with the same problems in estimating the *original cost* of installing a given unit of property. There too the quantities must be estimated from plans and specifications and the labor costs must be obtained on the basis of the prevailing wage scale so that, in the final analysis, the magnitude of the task involved in preparing an estimate of reproduction cost is neither less nor unlike that involved in the preparation of an estimate of original cost. How then can it logically be argued that the former is more "conjectural", "hypothetical" or "unsound" than the latter?

It may be conceded that where the books of a particular utility company have at all times recorded the original cost of the installation or construction of property and such utility has maintained continuing property records disclosing additions and retirements at cost, the actual cost can then be determined with definite assurance. In the case at bar it is a fact that the books of the Appellee do not record the original cost of its plant and property (R. 402-412, 733-734) and this is true in the vast majority of cases. Even where original cost can be definitely determined from the books of a company or otherwise, to ignore all other elements of fair value is to ignore certain essential considerations in the proper determination of a rate base.

The Commission's brief, in assailing the propriety of accepting evidence of reproduction cost, criticizes allowances for general overhead expenses which are necessarily embraced within any competent estimate of reproduction cost. Such a criticism completely overlooks the perfectly obvious fact that the construction of a public utility or industrial plant necessarily requires the expenditure of money for something other than labor and materials. Such costs have been specifically recognized by this Court in *Des Moines Gas Co. v. City of Des Moines*, *supra*, and are recognized by the Commission in its uniform classification of accounts prescribed for electric corporations.

Included in the allowances for overhead expenses are such items as architect's fees, legal expenses, interest during construction, insurance and similar items of unavoidable expenses necessarily incident to the original cost of the property, and hence to an intelligent estimate



*seeking to determine what would be its present cost.* In this connection, the Court's attention is respectfully invited to Appendix III at page 1562 of the aforementioned Report of the Special Committee of the American Society of Civil Engineers, to which reference is made by the Commission at page 44 of its brief, in support of its argument that the reproduction cost doctrine is unsound from an engineering standpoint. A tabulation is there contained of actual overheads incurred in connection with the construction of given public works projects and the average expenditure for items embraced within general overheads (excluding taxes, interest during construction and discount on securities) *exceeds those used in the reproduction cost estimate of the company in the instant case.* Thus, the very report so much admired by the Commission recognizes not only the necessity of allowances for general overhead expenses, but discloses that the actual percentage of overheads in relation to the direct cost experienced on the average project mentioned in the report, were in excess of those here challenged by the Commission.

Indeed it is difficult to find where the Commission derives *any* comfort from the aforementioned report to support its contention that the element of reproduction cost should be ignored in determining a rate base or, expressed conversely, that original cost should be the sole measure of determining such rate base. At page 1356 of the report, the Committee observes that

“ \* \* \* to ascertain original cost to date, it is necessary, as a rule, that a schedule be made of the various existing property items *in the same way that one would be made for determining the cost of reproduction*”.

This is exactly the procedure followed in the preparation of the original cost estimate submitted by the company in the instant case and is strong support for the Appellee's contention that the magnitude of the task involved in an estimate of reproduction cost is no greater than the one involved in the preparation of an estimate of original cost.

The Commission, in its brief beginning at page 48, further contends that the reproduction cost rule is unsound from an accounting standpoint. Its *sole* argument in support thereof is that "There is no set of accounts which a regulatory commission can require a utility to keep in order to disclose the various elements of value now required by judicial mandate of *Smyth v. Ames* to be considered in the determination of the rate base". With the last-quoted observation, there will be no disagreement because, as this Court has repeatedly held, the determination of value is not a matter of formula. *Minnesota Rate Cases, supra*. It may be admitted that effective regulation demands that a utility should be required to record the original cost of its property and maintain continuing property records whereby all additions to and retirements from capital accounts are recorded at cost. Even after a strict compliance with such regulations, however, reference to a utility's books so maintained would not disclose the fair value of the company's property but merely its original cost—one of the elements of fair value. Fair value, it is submitted, is not an accounting problem, but involves a judicial determination to be made after a full and fair hearing in which all substantial evidence relating to the various elements of value is considered and properly weighed.

In connection with the Commission's criticism of the present rule of fair value from the accounting viewpoint,

Appellee cannot refrain from directing attention to the misleading nature of the reference on page 52 of the Commission's brief. It is a reference to the testimony of the president of American Water Works & Electric Co., Inc., before the Securities & Exchange Commission at a hearing held on September 15, 1937, in which the Pennsylvania Public Utility Commission intervened. The testimony mentioned, as is well known to the Commission, had no relation whatever to the fair value of the operating subsidiaries of the company there involved or to any estimates of reproduction or original cost. The write-up which occurred in the instance mentioned in the testimony, had to do with the write-up of capital stock resulting from a fluctuation in prices on the New York Stock Exchange. Any criticism of the practice referred to in that case has no relevancy to a discussion of the respective merits of reproduction and original cost as elements of fair value.

We submit that the foregoing discussion abundantly shows that the so-called "prudent original cost" doctrine which the Commission requests this Court to adopt as the constitutional standard of rate making is not the practical solution to the problem with which the Commission is faced, and that its adoption will in no way aid the Commission in the determination and prescription of rates. On the contrary, the determination of original cost involves the same elements of conjecture and estimate that are involved in a reproduction cost appraisal. In addition, the Commission's theory would add a further and even more conjectural element by the use of the word "prudent." This alone would involve the courts in endless litigation to determine in every specific case what part of the cost was prudently incurred. The test itself is wholly meaningless, and when

it is considered that the cost of most utility properties goes back over a long period of years, it is obvious that a determination of prudent cost can be made only in terms of an individual's opinion which can seldom, if ever, be fully supported by the facts, since all of the facts will not and cannot be known.

In the light of these considerations, it is particularly pertinent to inquire into the results which may reasonably be expected to follow the adoption of any such doctrine. The fair value rule of rate making has been followed uniformly by this Court for the last forty years. Obviously investors in utility enterprises have assumed that this constitutional protection would be afforded them. The entire utility industry in this country has been built up and capitalized on the theory that every utility was entitled to earn a **fair return upon the fair value of its property**. As a consequence, and this is common knowledge, utility securities are even in these depressed times selling on the security markets at prices relatively commensurate with what is believed to be the present value of those securities measured by the fair value of the properties which underly them, and on what is confidently assumed to be the fair return which the investor may expect upon such value. The adoption of the Commission's "practical" theory would result only in endless confusion and the destruction of all present values of public utility properties and securities.

Moreover, the substitution of *cost* for *value* as a rate base would have the necessary effect of eliminating the possibility of capital appreciation of investment in utility enterprises, since it would limit the return to a return on cost and would thus prevent any effective increase in value. Thus every utility investment, even

the common stock, or equity investment, would be reduced to the status of a fixed interest obligation, and the profit motive, which must be recognized as valid so long as a capitalistic system is ours, would be removed from the utility enterprise.

The removal of the profit motive may be a sound theory as applied to a static condition. But it can hardly be questioned that the utility industry in this Country could never have been built up without that motive, which in turn is based upon the opportunity for capital appreciation of investment. We believe that to adopt a theory which will prevent the logical and necessary expansion of the utility industry through the continuous hope not only of steady return but also of capital appreciation is economically unsound, and that its practical effect would be disastrous.

In view of the attempt of the Commission in this case to introduce an entirely new conception of due process of law into the law of the land, it is important to revert once more to fundamentals and to inquire what just compensation for the taking of property is guaranteed under the Fourteenth Amendment of the Federal Constitution.

That the regulation by a state of the rates of a public utility is a "taking" of the utility's property within the Fourteenth Amendment of the Constitution of the United States and is hence within Section 1 of that Amendment, prohibiting the deprivation of property without due process of law, is too well settled to need citation of authorities. The complete analogy between rate regulation and condemnation is admirably stated in *West v. Chesapeake & Potomac Telephone Company*, 295 U. S. 662, 671, (1935) citing numerous cases:

"The established principle is that as the due process clauses (Amendments Five and Fourteen) safeguard private property against a taking for public use without just compensation, neither Nation nor State may require the use of privately owned property without just compensation. When the property itself is taken by the exertion of the power of eminent domain, just compensation is its value at the time of the taking. So, where by legislation prescribing rates or charges the use of the property is taken, just compensation assured by these constitutional provisions is a reasonable rate of return upon that value."

To the framers of the Constitution and to the courts of this country, compensation for the taking or the use of private property meant only one thing: a just payment for the *present value* of the private property so taken or so used. *Brett v. United States*, 86 Fed. (2nd) 305, 307, cert. denied, 301 U. S. 682, (1936); *United States v. Chandler-Dunbar Water Power Company*, 299 U. S. 51, 76 (1936); *United States v. Rogers*, 255 U. S. 162, 169 (1921); *Morton Butler Timber Company v. United States*, 91 Fed. (2nd) 884, 891 (1937). And while the fair market value of the property was the most desirable way of determining its present value, where it was impossible to obtain the market value of a property, the question was then one of ascertaining in some other way the *present value*. Undoubtedly, in such cases a legitimate source of information was the *cost* of the property, but always the end sought was the property's present value. Where reproduction cost (more properly called present cost) was obtainable, it was inevitably and uniformly considered.



In *Oshkosh Water Works Company v. Railroad Commission*, 161 Wis. 122 (1915), the Supreme Court of Wisconsin stated:

"In the proper valuation of a public utility for condemnation or sale purposes certain named elements usually present in every case may legitimately be considered. These are the present values of its physical property, the present and prospective reasonable earnings of its business, the going value thereof, and the amount of money presently needed to put the plant in good condition. There may be other elements, but these are generally the essential ones. In determining the value of the physical property, due regard should be had to the original cost thereof, the reproduction cost, the amount of depreciation, and the amount of obsolescence."

Likewise, in the case of *In re United States Commission*, 295 Fed. 950 (1924), in construing a condemnation statute providing for the payment of "a sum of money equal to a fair and just valuation of the buildings and improvements then standing on said grounds," the Court of Appeals for the District of Columbia said:

"We are of the opinion that the only just and legal method of arriving at the fair value of the property to be taken over by the government, under the provisions of the act, is to determine first the cost of reproduction based upon present values and deducting therefrom the amount of depreciation. This places a correct valuation upon what the authorities term the bare bones of the plant or its physical properties; in other words, *what it would cost to reproduce this building, not one that would take its place.*"

The Commission's theory, it is repeated, is not merely an attempt to change the rules of evidence that govern a determination of fair value in considering the com-

compensation due under the Constitution, nor is it a redefinition of what has been defined for time immemorial to be the fair value of such private property. It is rather a request to this Court to utterly abandon its conception of fair value and to adopt in lieu thereof something else. And this new conception declares that it is immaterial whether compensation be made for the fair value of property which is taken or used but that all that is necessary to be done is that compensation be made for the original cost of such property. If a man's house, then, is condemned by a state in the exercise of its powers of eminent domain, he shall not be entitled to a just compensation for its fair value but he shall be restricted to its original cost. For if a utility is so restricted in a determination of its compensation, then, to, must the individual receive the same measure, as in both instances there is a "taking" of their property within the Fourteenth Amendment of the Constitution of the United States. *West v. Chesapeake & Potomac Telephone Company, supra.*

The Appellee appreciates the complexity of public utility regulation but while the determination of a fair return on the fair value of a utility's property may be a vexatious one, it is not to be solved by an approach so at variance with fundamental concepts of justice. The problem is a practical one for the regulatory bodies to cope with, and, as has been pointed out, there are many developments in rate regulation which do and will increasingly facilitate their determination of the difficult questions involved.

The real and "practical" solution to the problem has already been provided by this Court. In *Railroad Com-*

*mission of California v. Pacific Gas & Electric Company, supra*, this Court sustained the action of the Commission in disregarding an estimate of reproduction cost which was too "conjectural" and in fixing rates based on prudent investment. We believe that in so doing this Court in effect announced the rule that only substantial evidence need be considered, that conjectural or speculative evidence may be disregarded and that commissions need not themselves produce evidence of all relevant elements of fair value, but that this burden must be borne by the utility. Such a rule, we submit, is the constitutionally proper solution to the problems stated in the Commission's brief. It is practical, economically sound, and legally just.

But it must never be forgotten that the problem is an administrative problem. The job is the commissions' job. It is the courts' function not to make rates but to see that they are constitutional. We can find no clearer statement of the relationship of the judiciary and the complexity of rate regulation than that made by the Circuit Court of Appeals for the Ninth Circuit in *Puget Sound Power & Light Company v. City of Puyallup*, 51 Fed. (2nd) 688, 690 (1931), where it was said:

"In view of this situation, it has been determined that the Constitution of the United States prohibiting the taking of property without compensation requires that the owners of a public utility shall not be deprived of a fair return upon the fair value of the property devoted to the public use. In arriving at the fair value of a public utility investment, the courts have gradually evolved rules with relation to the evidence pertinent to that issue. These rules which indicate the nature and character of the evidence to be considered by the rate-making

body and by the courts in determining the fair value of a public utility property are largely prohibitive in character; that is to say, *the courts have determined that rates cannot be fixed upon a basis which ignores certain elements of value which go to make up a fair value of the property.* This process of evolving an appropriate method of valuation for rate-making purposes is still in a state of development, and involves very great practical difficulties, some of which are not completely solved, partly for the reason that under the Constitution final authoritative decision rests in the courts which have no power to make rates and no machinery for the ascertainment of all of the complex elements entering into the determination of what constitutes a fair valuation of the property. The province of the court in such a matter is confined to the duty of preserving to the owner of property the fundamental right guaranteed to him by the Constitution that his property shall not be taken from him without just compensation, and for that purpose to prohibit the nibbling away of his property by the fixing of rates which gradually but effectively destroy the value thereof."

The Appellee submits that the request of the Commission that this Court repudiate the doctrine of *Smyth v. Ames* should be refused as repugnant to common sense and to a proper regard for the rights guaranteed by the Constitution of the United States.

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1938.

No. 509

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J. BEAM-  
ISH AND JOHN SULLIVAN, INDIVIDUALLY, AND AS  
THE PERSONS CONSTITUTING THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION,

AND

UTILITY CONSUMERS LEAGUE OF YORK, PA.,  
*Appellants,*

v.

EDISON LIGHT & POWER COMPANY,  
*Appellee.*

**APPELLEE'S SUPPLEMENTAL BRIEF**

WALTER BIDDLE SAUL,  
*Attorney for Appellee.*

CLARENCE W. MILES,  
EDWARD F. HUBER,  
BRADFORD S. MAGILL,  
J. HARRY LA BRUM,  
*Of Counsel.*





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Individually, and as the Persons Constituting the PENN-  
SYLVANIA PUBLIC UTILITY COMMISSION,

and

UTILITY CONSUMERS LEAGUE OF YORK, PA.,

*Appellants,*

*v.*

EDISON LIGHT & POWER COMPANY,

*Appellee.*

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**APPELLEE'S SUPPLEMENTAL BRIEF**

**A. Misunderstanding and Misstatements Concern-  
ing the Question of Confiscation.**

Because of a misunderstanding by Appellee's counsel  
on the argument, there may have been left with the Court  
an impression that Appellee *concedes* that upon the re-  
turn allowed by the Commission's order, it will earn 6½%  
on Appellee's claimed minimum fair value of \$5,866,081.\*  
**Appellee makes no such concession, for this is not the fact.**

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\* See Appellee's main brief, pp. 108, 109.

The Commission submitted to the Court a photostatic tabulation which purports to show that, under its order, there is allowed a return of \$405,706, which concededly would be approximately 61½% of the minimum fair value claimed by Appellee; and to show that, on Appellee's figures, the order was non-confiscatory. However, *the Commission's tabulation does not reflect the true return allowed by its order, nor the true figures on which Appellee relies*; and any possible unintended concession, made on the basis of its correctness, must, in fairness to the Appellee, be disregarded by the Court.

In the first place, the \$405,706 available return, stated in the Commission's tabulation contradicts its order which made available a return of \$384,500. What is even more important, it *assumes* that an allowance had been made for all proper operating expenses. The amount of the operating expenses *disallowed* is \$214,057.\*

Appellee's claims with respect to these items are set forth at pages 103-105, and 108 of its main brief, and need not here be repeated. Appellee's evidence with respect thereto is uncontradicted of record. But what is here most important to be noted is, that if the Appellee's claims are allowed, then the Commission's order limits it to a return, *not of 61½% on the fair value of its property, but of 2.90%,\*\* 4.9% or 5.33%*, depending upon the period of amortization, if any, of rate case expense. The following tabulation makes this clear:

\* \* Includes \$15,089 loss of profit from street railway abandonment.

\*\* The finding of the court below that the rate of return allowed by the Commission's order was 3.27% is not supported in this Court because the court below mistakenly allowed taxes of \$185,000 annually instead of \$206,400, as computed by the Commission (R. 36). The correct finding should have been 2.90%.

RATE OF RETURN COMPARISON BASED ON A MINIMUM  
FAIR VALUE OF \$5,866,081.

	Income	Rate of Return
Operating Revenues—12 Months ended September 30, 1937 (R. 33) .....	\$2,202,329	
Rate Reduction Ordered by Commission (R. 38) .....	435,000	
	<hr/> \$1,767,329	
Deductions allowed by Commission:		
Operating Expenses (R. 37) \$1,033,898		
Taxes (R. 37) .....	206,400	
Retirement Expense (R. 37) .....	142,531	
	<hr/> 1,382,829	
Available for Return as set forth in Com- mission's temporary rate order dated No- vember 30, 1937 .....	\$ 384,500	6.55%
Deductions <b>disallowed</b> by Commission:		
Increased annual salary ex- pense to officers and em- ployees (R. 34) .....	\$ 20,593	
Loss of annual profit by rea- son of abandonment of rail- way service by York Rail- ways Company, (R. 1018) .....	15,089	
Actual rate case expenses re- corded on books to Novem- ber 15, 1937 (R. 32, 1037) .....	178,375	
	<hr/> 214,057	
*Available for Return on basis of absorbing rate case expense in one year .....	\$ 170,443	2.90%
Amortization of the rate case expense over a three year period would increase the return by .....	118,917	
Available for Return on basis of three year amortization .....	<hr/> \$ 289,360	4.93%
Amortization of the rate case expense over a five year period would increase the return by .....	\$ 142,700	
Available for Return on basis of five year amortization .....	<hr/> <hr/> 313,143	5.33%

The photostatic tabulation submitted by the Commission is unsupported by the record. **But of greater consequence to the Appellee is the tabulation's misstatement of Appellee's contentions**, both on the basis of reproduction cost and original cost.

It *understates* Appellee's reproduction cost base by over \$500,000:

FIRST: It fails to show Appellee's concession of the correctness of the Commission's allowance of \$164,000 for working capital.

SECOND: It fails to give effect to Appellee's evidence of rise in price levels between November 30, 1936, the date of the reproduction cost estimate, and the final hearing.\*

THIRD: It fails to give effect to net additions of \$142,851 between November 30, 1936 and the final hearing.

In stating the *Commission's* position, which ignores the uncontradicted evidence of the second and third items, *supra*, the tabulation:

(1) Ignores the only substantial record evidence of indirect costs, resulting in a reduction of \$212,807

(2) Makes no allowance for going concern value of \$400,000.

The photostatic tabulation *misstates* Appellee's original cost base:

FIRST: It deducts \$349,000 for cost of financing.\*\*

SECOND: It fails to include \$142,851 for net additions.

THIRD: It fails to include any allowance for going concern value.

\* See *McCart v. Indianapolis Water Co.*, 302 U. S. 419 (1938).

\*\* See Appellee's main brief, pp. 89 to 90 for a discussion of this item.

True comparison of original cost estimates is further rendered impossible by the Commission's attempt to depreciate original cost, which is non-depreciable.

To the Commission's attempt to show by a tabulation that, **if** its treatment of rate base, rate of return, and allowable expenses is correct, its order is non-confiscatory, we do not object; for it is open to the Appellee to show the error of the Commission's actions, as it has done. **But we most strenuously object to any attempt to show that the order is non-confiscatory on the basis of Appellee's claims, by misstating or failing to state those claims in full.** It is because the Commission has seen fit to do just this, that we assert that *the purported comparisons in the photostatic tabulation are misleading, and should be ignored*; and for the same reason we refer the Court to the tabulation printed on page 3 hereof for a correct statement of Appellee's contentions.

It appears clearly from the foregoing that Appellee's claim of confiscation is *substantial*; that it is in no sense a mere attenuated assertion which is dissipated by examination of the record. Indeed, in this regard, we urge earnestly that the record be carefully examined;—for tested by such an examination not only are Appellee's contentions with respect to confiscation established, but the Commission's findings as to rate base and rate of return are shown to be unsupported by substantial evidence.

Appellee has never deemed it necessary or proper to establish the *quantum* of confiscation. Indeed, the calculations made herein are not intended to fix the exact fair value or fair return which should have been found by the Commission. They are intended to, and we believe they do, establish that upon a most conservative valuation and treatment of operating expenses, *the return allowed by the Commission is far less than fair*, and that confiscation to



a considerable degree must result from the enforcement of the Commission's order. But this Court has uniformly held, and Appellee asserts in reliance on such holdings, that the judicial inquiry, on a claim of denial of due process, extends first to a determination of whether due process has been afforded in the procedural sense—whether there has been a fair hearing, and whether the determination has been made on the evidence, or arbitrarily either without substantial evidence, or in clear disregard of it.\* In this case the Commission's arbitrary action, contrary to and in the absence of substantial evidence, is plain,\*\* and requires an affirmance of the decree below independently of any consideration of the question of confiscation *vel non*.

## B. The Questions to be Decided Antecedent to Any Consideration of Confiscation.

It is respectfully submitted that in this case there are several other independent questions to be decided by the Court *antecedent* to the consideration of confiscation, and that *only in the event that all these antecedent questions*

\* See, *West v. Chesapeake & P. Tel. Co.*, 295 U. S. 662 (1935), and *Northern Pacific Ry. Co. v. Dept. of Public Works*, 268 U. S. 39 (1925), in neither of which cases was there a finding of confiscation, but in both of which commission orders were held to have constituted a denial of procedural due process. In the latter case, at page 44, this Court said:

"The mere admission by an administrative tribunal of matter which under the rules of evidence applicable to judicial proceedings would be deemed incompetent, *United States v. Abilene & Southern Ry.*, 265 U. S. 274, 288, or mere error in reasoning upon evidence introduced, does not invalidate an order. But where rates found by a regulatory body to be compensatory are attacked as being confiscatory, Courts may enquire into the method by which its conclusion was reached. An order based upon a finding made without evidence, *The Chicago Junction Case*, 264 U. S. 28, 263, or upon a finding made upon evidence which it only does not support it, *Interstate Commerce Commission v. Union Pacific R.R.*, 222 U. S. 541, 547, is an arbitrary act against which courts afford relief. The error under discussion was of this character. It was a denial of due process" (Italics ours.)

See also:

*St. Joseph Stockyards Co. v. U. S.*, 298 U. S. 38 (1938).

are decided adversely to the Appellee does the question of confiscation become pertinent.

In the first place, if, as Appellee contends, the Commission did not comply with the only section of the law under which it is empowered to act at all, its order is a nullity. While the construction of the statute is a local question, never considered by the Courts of the Commonwealth, it is nevertheless the *primary* question for decision in this Court.\*

In the second place, even if it be first decided that the Commission properly construed Section 310 in proceeding under subparagraph (a) thereof, this Court must then decide the constitutionality of the law. In this connection, we respectfully direct the Court's attention to Appellee's main brief, pages 27 to 59, wherein is discussed the unconstitutionality of the law as a delegation of unlawful powers under the Federal Constitution,\*\* as an unlawful delegation of powers under the State Constitution, and as a denial of the equal protection of laws under both Federal and State Constitutions. If the statute be unconstitutional, the Commission's order is wholly void.

Only if all these questions of law are decided adversely to Appellee is the Court required to concern itself with the record as a whole—first, to determine whether the

\* It has uniformly been held that where a Federal court takes jurisdiction of an application to enjoin the enforcement of a State Commission's rate order on Federal Constitutional grounds, that court has jurisdiction to pass on all questions raised, even though they concern merely the construction of a state statute.

*Siler et al. v. Louisville & Nashville R.R. Co.*, 213 U. S. 175 (1909).

*Greene v. Louisville & N. R.R.*, 244 U. S. 499, 508 (1917).

*Frist v. Chicago & N. W. P. Ry. Co.*, 270 U. S. 378, 387 (1926).

*California Water Service Co. v. City of Redding*, 304 U. S. 252 (1938).

\*\* In this connection, it should be noted that the unconstitutionality appears on the face of the statute, without reading into it a word, or changing a comma; and that only by reading into the statute words which nowhere appear, and words which are directly contradictory to the plain legislative intent (i.e. the words "just and reasonable"), can the statute be constitutionally construed. See Appellee's main brief, pages 49-50.

Commission acted properly, with a fair hearing, and a decision based on substantial evidence, and second, to determine whether the result of the Commission's action was a denial of substantive due process of law; or confiscation.

### Conclusion

Appellee's case in this Court does not depend on the maintenance of a chain of interdependent legal propositions, but rather upon the establishment of any one of a number of *completely independent* propositions. We believe each of them is firmly rooted in correct legal principles correctly applied to the statutes and facts before the Court. We respectfully submit, however, that a consideration of these propositions in what we believe to be the logical order here suggested will relieve this Court of the unnecessary burden of reviewing a voluminous record, and should result in the affirmance of the decree of the Court below.

Respectfully submitted,

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*Attorney for Appellee.*

CLARENCE W. MILLER,  
EDWARD F. HUBER,  
BRADFORD S. MAGILL,  
J. HARRY LA BRUM,

*Of Counsel.*

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CHARLES ELMORE BROPLEY  
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IN THE  
**Supreme Court of the United States**

No. **509**

Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH, and DONALD LIVINGSTON,  
individually, and as the persons constituting the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

and

UTILITY CONSUMERS LEAGUE OF THE CITY  
AND COUNTY OF YORK,

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation  
*Appellee*

**OPPOSITION OF EDISON LIGHT & POWER COMPANY TO MOTION OF PENNSYLVANIA PUBLIC UTILITY COMMISSION TO ADVANCE ARGUMENT.**

WALTER BIDDLE SAUL,  
*Counsel for Appellee.*

CLARENCE W. MILES,  
EDWARD F. HUBER,  
J. HARRY LABRUM,  
*Of Counsel.*

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IN THE

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No.

Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH, and DONALD LIVINGS-  
TON, individually, and as the persons constituting the  
PENNSYLVANIA PUBLIC UTILITY COMMIS-  
SION

and

UTILITY CONSUMERS LEAGUE OF THE CITY  
AND COUNTY OF YORK,

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation

*Appellee*

## OPPOSITION OF EDISON LIGHT & POWER COM- PANY TO MOTION OF PENNSYLVANIA PUB- LIC UTILITY COMMISSION TO ADVANCE ARGUMENT.

Edison Light & Power Company, appellee in the above-entitled cause, opposes the motion to advance heretofore filed herein by the appellants on the grounds that (1) the granting of the motion would seriously prejudice the appellee and (2) the reasons advanced by the appellants are insufficient to justify the granting the motion.

1. The granting of the motion would seriously prejudice the appellee.

Counsel for the appellee have pending professional commitments which prevent their entering upon the preparation of briefs and argument without serious interference and prejudice to the rights of other clients, in whose behalf they are now acting. Walter Biddle Saul, Esquire, and Edward F. Huber, Esquire, of appellee's counsel, are now engaged in the conduct of an investigatory proceeding before the Federal Power Commission, hearings in which, they are advised, may continue for several weeks. Clarence W. Miles, Esquire, of appellee's counsel, has been and is now engaged in a proceeding under Section 21-a. of the Bankruptcy Act, instituted by the Treasury Department of the United States, and being carried on in Wilmington, Delaware, before a Special Master appointed by the United States Court for the District of Delaware. Hearings in this matter are expected to continue several days during each week of the next three weeks.

Under such circumstances, it will be impossible for said counsel adequately to review a record of over nine hundred printed pages of testimony and numerous statistical exhibits, as well as to prepare written and oral argument, if argument in this case is advanced prior to January 17, 1939, or before the date on which it would normally be reached.

2. The reasons advanced by the appellants are insufficient to justify the granting of the motion.

(a) The speedy conclusion of the rate litigation in which the appellee is involved does not, as urged by appellants, require the advancement of the argument.

The rate proceedings were instituted in 1936, on its own motion, by the Pennsylvania Public Service Commission, the predecessor regulatory body to the Pennsylvania Public Utility Commission, the appellants herein. Hearings before the Public Service and Public Utility Commissions proceeded until June 23, 1937 when the taking of testimony concluded. There is no contention that the proceedings were not carried on with all due diligence and dispatch until concluded on said date. The record was then in such condition that a *final* rate order could have been made by the Commission and the appellee has, since sought, without success, to obtain such a final order.

The Commission did not then make, and has not since made, in the intervening period of a year and a half, a final rate order. Instead, so-called "temporary" rate orders were entered, one of which was voluntarily withdrawn by the Commission, the second of which was permanently enjoined by a federal statutory court and the third of which, *entered over a year ago*, was likewise enjoined, and is the subject of this appeal.

A speedy conclusion in the public interest of the rate litigation herein involved can be promptly effected by the Commission entering its order prescribing *final* rather than temporary rates. The Commission possesses not only the power but is charged with the duty of fixing *final* rates in proceedings where, as in the instant case, all hearings in connection therewith have been completed and no party in interest is desirous of presenting further testimony or evidence.

Furthermore, the Commission waited thirty-five days after the entry of a final decree in this cause before filing their appeal, the argument of which they now seek to advance.

(b) The general public interest does not require the advancement of the argument.

The fact that, as alleged by appellants in their motion to advance, there are one hundred and ninety-three rate cases pending before the Commission does not indicate that temporary rates would be warranted in any of such cases. There is no suggestion in the Commission's motion that either the state of the record in those cases or the facts developed therein, justify the application of Section 310 of the Pennsylvania Public Utility Law, the section providing for temporary rates and the validity of a portion of which is in issue in this appeal. Nor is there a suggestion that in any one of those cases the Commission would have made a temporary rate order but for the pendency of this appeal. Indeed, no such statement could properly be made for, since the decision appealed from, the Commission has manifested that it did not feel circumscribed by such decision by imposing temporary rates in several cases among those listed in Exhibit A of the appellants' motion.

These facts show, in addition, that neither the decision appealed from nor its alleged conflict with any other decision, has rendered it impossible for the Commission to administer the Pennsylvania Public Utility Law or Section 310 thereof, as alleged in its motion to advance.

(c) The retirement from office of the Attorney General and the counsel for the Commission on January 17, 1939 will neither prejudice nor delay appellants, nor adversely affect the public interest.

In the proceedings before the Commission, Samuel Graff Miller, Esquire, its assistant counsel, has conducted all hearings, examined all the witnesses and presented all of the Commission's evidence. Edward Knuff, Esquire, the Commission's counsel, did not participate. In the suit now on appeal, as well as in a previous suit in the United States Court for the Middle District of Pennsylvania, Mr. Miller again examined all witnesses, presented all the Commission's evidence and made all arguments in its behalf. Mr. Knuff presented no evidence, examined no witnesses and made no arguments. Mr. Miller does *not* retire from office on January 17th and the fact that Mr. Knuff does retire on that date need not prejudice the appellants or the public interest.

The Attorney General has at no time had any active participation in the case. When the suit was instituted he was a public utility commissioner and a defendant in the action. It is impossible to see how his retirement on January 17, 1939 can prejudice the Commission or the public interest in any manner.

WALTER BIDDLE SAUL,

*Counsel for Appellee.*

CLARENCE W. MILES,

EDWARD F. HUBER,

J. HARRY LABRUM,

*Of Counsel.*





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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1938.

**No. 509.**

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J. BEAM-  
ISH and JOHN SULLIVAN, Individually and Con-  
stituting PENNSYLVANIA PUBLIC UTILITY  
COMMISSION; and UTILITY CONSUMERS  
LEAGUE OF YORK, PA.,

*Appellants,*

v.

EDISON LIGHT & POWER COMPANY,

*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

**BRIEF FOR THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK  
AMICUS CURIAE.**

✓ GAY H. BROWN,  
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SHERMAN C. WARD,  
*Of Counsel.*



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IN THE  
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EDISON LIGHT & POWER COMPANY,

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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**BRIEF FOR THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK  
AMICUS CURIAE.**

---

The Public Service Commission (State Division, De-  
partment of Public Service) of the State of New York  
having an interest in the litigation adverse to Edison  
Light & Power Company, Appellee, presents the fol-  
lowing brief as *amicus curiae*.



## Statement of Facts.

This is an appeal by Denis J. Driscoll *et al.*, individually and constituting the Pennsylvania Public Utility Commission and Utility Consumers League of York, Pa., from an order of the United States District Court for the Eastern District of Pennsylvania granting a permanent injunction against temporary rates fixed by the Pennsylvania Public Utility Commission.

### Interest of Public Service Commission of the State of New York.

By Chapter 287 of the Laws of 1934 of the State of New York the Public Service Law of the said state was amended by adding section 114, which section authorizes the Public Service Commission, under certain conditions and subject to certain restrictions and provisions, to fix temporary rates for public utilities under its jurisdiction pending the determination of final rates. This section of the Public Service Law of the State of New York provides:

§ 114. TEMPORARY RATES. To facilitate prompt action by the commission in proceedings involving the reasonableness of the rates of any public utility and to avoid delay in any such rate proceeding, the commission is hereby authorized to require any public utility company to establish, provide and maintain continuing property records, including a list or inventory of all the physical property actually used in the public service, and to require any public utility company to keep its books, accounts and records in such manner as to show currently the original cost of said physical property and the reserves accumulated to provide for the

retirement or replacement of said physical property.

The commission may, in any such proceeding, brought either on its own motion or upon complaint, upon notice and after hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by said utility company pending the final determination of said rate proceeding. Said temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property of said public utility company used and useful in the public service, and if the duly verified reports of said utility company to the commission do not show the original cost, less accrued depreciation, of said property, the commission may estimate said cost less depreciation and fix, determine and prescribe rates as hereinbefore provided.

Temporary rates so fixed, determined and prescribed under this section shall be effective until the rates to be charged, received and collected by said utility company shall finally have been fixed, determined and prescribed. The commission is hereby authorized in any proceeding in which temporary rates are fixed, determined and prescribed under this section, to consider the effect of such rates in fixing, determining and prescribing rates to be thereafter charged and collected by said public utility company on final determination of the rate proceeding.

It will at once be noted that the above quoted section is similar in its provisions and purposes to section 310 of the Pennsylvania Public Utility Law.

The constitutionality of the New York State statute has been upheld by the highest court in that State (*Matter of Bronx Gas and Electric Company v. Maltbie*, 271 N. Y. 364), and the Public Service Commission of the State of New York is now, in appropriate proceedings, exercising the rights and jurisdiction conferred by this section of its law.

## ARGUMENT.

### POINT I.

**Section 310 of the Pennsylvania Public Utility Law, so far as it authorizes that Commission to fix temporary rates, is constitutional.**

It is plain that the law making bodies of the State of Pennsylvania in enacting section 310 of the Pennsylvania Public Utility Law exercised the greatest care to meet the objections laid down by this Court to certain statutes of other states authorizing the establishment of temporary rates when no provision was made protecting the utility if such temporary rates were finally found to be too low to pay a reasonable return on the property of the public utility (*Prendergast v. New York Telephone Company*, 262 U. S. 43). The statute was, therefore, drawn laying down a simple rule that could be promptly applied by the state commission in establishing a temporary rate base and providing a sure method by which the utility is assured of repayment of all amounts lost if the temporary rates are subsequently found inadequate.

### *Temporary Rate Base*

Under existing utility acts of many states, temporary rates could not be established until the regulatory body had considered all facts relevant to a determination of a fair return on present value. This requirement was an almost insurmountable handicap to effective regulation of utilities and had repeatedly made it impossible for such regulatory commissions to effect a needed temporary reduction in rates. In numerous cases, despite the fact that the old rates were obviously excessive, consumers were required to pay excessive rates during the entire pendency of a rate proceeding, and until permanent rates were established by such commissions. Because of this lack of power to fix temporary rates during the progress of rate proceedings, the utilities in many instances have availed themselves of every conceivable pretext for delay.

It is very apparent that section 310 of the Pennsylvania Public Utility Law was enacted mainly to remedy this defect. Under this section the Pennsylvania commission is authorized to consider the original cost less accrued depreciation as a rate base. Both these elements are definite, certain and readily ascertainable from the records of the company. If the utility does not have such records the Commission is authorized to fix a rate based upon the results of operations during a prior year plus or minus a return on the net changes in the physical property of the company as reported to the Commission.

The primary object of this section is to facilitate prompt action so that where the Commission deter-

mines that the public interest requires its action, temporary rates may be established during the progress of a rate proceeding. As a result of this method of procedure the consumer may have the benefit of reduced rates when warranted by the facts and the utility will have an incentive to do everything in its power to aid in the prompt and expeditious determination of the rate proceeding.

### *Power to Correct Errors*

The temporary rates fixed by the New York State Public Service Commission and condemned by this Court in *Prendergast v. N. Y. Tel. Co. (supra)* were to all intents final rates. Because of this fact the utility could never make up the loss in revenues which it suffered by reason of the inadequacy of the temporary rates there fixed.

However, the temporary rates fixed pursuant to section 310 of the Pennsylvania Public Utility Law are not subject to this fatal objection. The section provides that any discrepancy in the temporary rates below those finally determined the utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates that would otherwise have been fixed as being just and reasonable. Said section 310 plainly requires:

1. That at the conclusion of every rate investigation in which temporary rates have been established the Commission must first determine what rates would be sufficient to pay to the utility a fair return upon the present value of its property used and useful in the public service and that in

making this determination all factors laid down by this Court in *Smyth v. Ames*, 169 U. S. 466, and in subsequent decisions, must be followed.

2. That a comparison must then be made between the rates so determined and the temporary rates.
3. That if from such comparison it appears that the temporary rates are less than those finally determined, the utility must be authorized to collect rates in excess of compensatory rates for a period sufficiently long to allow it to recoup the losses it sustained while the temporary rates were in effect.

*Temporary Rates Established Pursuant to Section 310 of the Pennsylvania Public Utility Law Cannot Be Confiscatory*

How can the action of the Pennsylvania Public Utility Commission, acting under the authority of this section, possibly result in a confiscation of the utility's property? If the Commission exercises the power granted by section 310 and fixes temporary rates reducing the rates charged by the utility the company is of course deprived of a certain amount of revenue during the effective period of such temporary rates, but it is not the deprivation of revenue itself that would render the statute unconstitutional as confiscatory. There can be no confiscation under any law unless it permanently deprives a person of property or compensation therefor. This is what the Constitution says cannot be done.

A utility is entitled to a fair return upon the present value of its used and useful property during the entire



period of its use and it cannot be *permanently* deprived of any of this revenue. It was to satisfy this constitutional requirement that section 310 was enacted.

Section 310 specifically commands the Commission to adjust the final rates so as to permit the utility to recoup any loss it may have sustained during the period the temporary rates were in effect. Under this statute how can the appellee claim that it will be permanently deprived of any money to which it may be entitled under the Constitution? It is emphasized that the constitutional prohibition against confiscation is against the *permanent* deprivation of property or compensation for its uses and any statute which protects a person against any such *permanent* deprivation and guarantees full payment for every minute of its use cannot become confiscatory.

*Section 310 of the Pennsylvania Public Utility Law Provides a Certain Source and Means of Repaying the Utility's Losses Sustained by Reason of Temporary Rates.*

The opinion of the Circuit Judge holds that section 310 (a) was unconstitutional in that the provisions for recoupment are entirely ineffective in view of the fact that "if the consumer discontinues the service or moves out of the territory, as doubtless in a shifting population will be frequently done, the utility in many cases will be absolutely without remedy \* \* \*." We believe that the Court misconstrued the provisions of the act. The requirement is not that each individual consumer make up in future rates the amount that he personally saved during the temporary rate period, rather, the act

authorizes increased rates that will be collectible from all consumers taking service during the recoupment period. Such a provision is entirely legal. No individual has any right to a particular rate, be it reasonable or otherwise. Only the public has the right to demand service at reasonable rates. What constitutes a reasonable rate for the public is prescribed by statute and is not subject to constitutional limitations. Under section 310 the Commission is required at the conclusion of a rate investigation to fix reasonable rates for service which shall permit a utility to earn an amount sufficient to

1. Provide a fair return upon the present value of its used and useful property;
2. An amount in addition thereto to permit the utility to recoup any loss which it may have suffered during the effective period of such temporary rates.

A rate sufficient to provide a utility with both amounts is a reasonable rate under the laws of the State of Pennsylvania and no consumer has the right to demand service at any lower rate.

That only the public, not the individual, has a right to demand service at reasonable rates has always been recognized. This was clearly held by this Court in *San Diego Land and Town Co. v. Jasper*, 189 U. S. 439; *J. M. Wright et al. v. Central Kentucky Natural Gas Company et al.*, 297 U. S. 537. It is our understanding of these cases that this Court has held that individual consumers have no vested interest in rates charged for service by a utility; that only the public has the right to demand service at any particular rate, and that the public is represented by its duly elected or appointed

public officers acting in their official capacity. The same general rule is laid down in *United States Light & Heat Corporation v. Niagara Falls G. & E. Co.*, 47 Fed. (2d) 567; certiorari denied, 283 U. S. 864, where it was specifically held that a consumer had no right to demand service at any particular rate and that such rights as he may possess existed only by reason of the provisions of the Public Service Law. In the course of its opinion the Court held:

*"A consumer or prospective consumer of gas in the territory has only such right as the Public Service Law gives him to complain of charges or service. As a general rule, a seller may fix the price of his produce at what he pleases or dispose of it at any price, but the courts have determined that, where property is affected with a public interest it is no longer juris privati; it becomes clothed with a public interest when used and sold in a community under a franchise grant. Thus the gas company's business becomes subject to the Public Service Law by reason of the interest which the public has. It must submit to the control by the Public Service Commission for the common good to the extent which it has clothed its property with public interest. But a citizen has no vested rights in statutory privileges or exemption. Cooley, Constitutional Limitations (8th Ed.) 792. This gas company became bound to furnish gas within the city of Niagara Falls by reason of the Public Service Law. The consumer was not obliged to purchase gas; he was privileged to do so. A private right may be interfered with so long as it is not vested (Cooley, Constitutional Limitations [8th Ed.] 749), and a right is not vested unless it is something more than a mere expectation as may be based upon an anticipated continuation of the present general laws (Brooklyn Union Gas Co. v.*

City of New York, 50 Misc. Rep. 450, 100 N. Y. S. 570)."

• • • • •

"The plaintiff and the intervener Hamann have no property rights which are affected by subdivision 6 of section 65 forbidding service charge. *Their right to service exists only because of the statute referred to. It is not such property right as may form the basis of a claim for confiscation or discrimination.* If there be an exercise of arbitrary power against the consumer and wrongful enforcement by the Commission of the Public Service Law, a remedy is afforded under the provisions referred to for the consumer to lodge his complaint, obtain a hearing and redress. City of Rochester v. Rochester Gas Co., 233 N. Y. 39, 134 N. E. 828 \* \* \*" (Italics ours.)

Under section 310 the public—the body which had the benefit of the reduced rates during their effective period—would have to make up the loss, if any, occasioned to the company during the effective period of the temporary rates. The mere fact that the individual consumer may have changed would be immaterial, and no property rights of such consumers could be adversely affected.

## POINT II.

The decision of this Court in *Prendergast v. New York Telephone Company*, 262 U. S. 43, is not authority for the holding that section 310 of the Pennsylvania Public Utility Law is unconstitutional.

The Court below apparently based its decision that the temporary rate provision of the Pennsylvania

statute was unconstitutional largely upon the determination of this Court in *Prendergast v. New York Telephone Company*, 262 U. S. 43, and that Court quotes at some length from this decision.

The rates enjoined in the *Prendergast* case were fixed by the New York State Public Service Commission pursuant to section 72 of the Public Service Law of that State. This section contained no provision providing for recoupment by the utility of insufficient temporary rates. This Court, therefore, held that under this section both temporary and permanent rates were alike in that temporary rates were final for the period they remained in effect and because of the finality of such rates there must be considered in fixing the rate base and rate of return all the elements that are relevant in fixing final rates.

Section 310 of the Pennsylvania Utility Law provides a very different procedure than that condemned by this Court in passing upon the old New York State statute. A comparison of the basic provisions of the two statutes will show that the method now before this Court differs essentially from the method prescribed in section 72 of the New York State Public Service Law. Placed in juxtaposition these provisions are:

SECTION 72 of the Public Service Law of the State of New York passed upon in the *Prendergast* case.

SECTION 310 of the Pennsylvania Public Utility Law now before this Court.

#### TEMPORARY RATE BASE

All relevant facts affecting a proper determina-

Original cost less accrued depreciation of the phy-

tion of the present fair value of the property.

sical property used and useful in the public service.

### RATE OF RETURN

Must be sufficient to provide a reservation for surplus and contingencies together with a reasonable average return upon the present value of property.

Must be sufficient to provide a return of not less than 5% upon the original cost less accrued depreciation of the physical property.

### POWER TO CORRECT ERRORS IN TEMPORARY RATES AND SAFEGUARD UTILITIES FROM LOSS

No provision. (The temporary rates are final for the period they remain in effect and can not affect the final determination.)

If final rates are in excess of the temporary rates the public utility must be permitted to amortize and recover by means of a temporary increase such sum as shall represent the difference between the gross income obtained from the temporary rates and the gross income which would have been obtained under the final rates.

In the course of its opinion in *Prendergast v. N. Y. Tel Co.*, (*supra*), this Court said:

“\* \* \* The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a



*reasonable return upon its property during such period WITHOUT REMEDY, unless their enforcement should be enjoined \* \* \** (P. 49).  
(Italics ours.)

From our study of this opinion, it appears that the injunction against the enforcement of temporary rates are affirmed for two reasons:

1. The temporary rates were *final and conclusive* during their effective period.
2. That unless enjoined the company would be without remedy.

As stated by the Court at page 51:

*"\* \* \* The Company meanwhile could only be protected from loss by injunction; while, on the other hand, its subscribers were protected by the bond which was required for the return of the excess charges collected if the injunction should be thereafter dissolved. There was no necessity in the particular situation presented for any test period of the new rates."* (Italics ours.)

The situation presented on this appeal is of an entirely different nature. Here there is a necessity for a test period of new rates and here the company is amply protected against any loss arising from the temporary rates.

As has already been pointed out, temporary rates prescribed by the Commission under section 310 are not final and conclusive. If it be determined after full and complete hearing that the appellee was deprived of an adequate return on the present value of its property during the effective period of the tem-

porary rates, the Commission is commanded to make provision in the final rates prescribed to permit the utility to recoup the amount of its loss.

Rather than be authority for the holding that the temporary rate provision of the Pennsylvania statute is unconstitutional, we believe that the opinion of this Court in *Prendergast v. N. Y. Telephone Co.*, (*supra*), definitely points out what method of procedure must be provided in a statute to bring it within the requirements of the Constitution. As we have already pointed out, the Pennsylvania act complies in every respect with these requirements.

### POINT III.

**The discussion and reasoning contained in the opinion of the New York State Court of Appeals in matter of Bronx Gas and Electric Company y. Maltbie, 271 N. Y. 364, is applicable to the facts and law here presented.**

On July 8, 1936, the Court of Appeals of the State of New York rendered its decision in an appeal involving an order of the Public Service Commission of the State of New York fixing temporary rates for the Bronx Gas and Electric Company. As we have previously pointed out, the New York State statute attacked in the Bronx case and the Pennsylvania Act held unconstitutional by the District Court are so similar that the opinion of Chief Judge Frederick E. Crane is entirely applicable. This opinion so clearly and logically answers every finding of Judge Davis in his opinion holding the Pennsylvania Act uncon-

stitutional that we will quote at length from Judge Crane's opinion. For convenience we have divided the opinion under several headings.

*Prendergast v. New York Tel. Co.*, 262 U. S. 43, *Distinguished*.

"To sustain the ruling of the court below, reliance is placed upon *Prendergast v. New York Tel Co.*, (262 U. S. 43), in which Mr. Justice SANFORD wrote the opinion. Under the law as it then existed, the Commission of this State had fixed a temporary rate, pending final determination of the fair and reasonable rate. This was held to be confiscatory and the temporary injunction issued by the United States District Court was upheld on appeal. Mr. Justice SANFORD in his opinion said: 'Nor did the fact that the orders of the Commission merely prescribed temporary rates to be effective until its final determination, deprive the company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate making process' (p. 49).

“Certain things were established by this decision: (1) The temporary rate is confiscatory if it denies a fair return upon the Company’s investment, that is, the temporary rate must give a fair return upon all those elements of capital value which must be considered in fixing the final rate. Of course this means that no temporary rate can ever be fixed, for, having all the elements upon which to fix a final rate, there is no necessity of calling it a temporary one. (2) The temporary rate, as fixed by the Commission in this *Prendergast* case, was a final rate, as the law had provided no means by which the company could be repaid its loss, should it finally be determined that the temporary rate was too low. (3) The court recognized that the public was entitled to a remedy and that the company could not profit through delays in legal procedure. It, therefore, recognized the practice of requiring the company, upon obtaining a preliminary injunction, to give a large bond, conditioned upon the repayment to consumers of the overcharges, if it should finally be determined that the Public Service Commission was right.” (Pages 369-370.)

*Is it Possible for a State Legislature or Congress to Provide by Statutes for the Fixing of Temporary Rates?*

“After this decision the Legislature of the State of New York was confronted with this *quaere*: Was it ever possible to compel public service corporations to charge reasonable rates, pending the long drawn-out and interminable proceedings to establish a fair return? The establish-

ment of the proper base rate, or the present capital investment, upon which a company is entitled to a fair return, has become an intricate, involved, tedious proceeding, extending into months and years. Much of the evidence produced is expert testimony, varying in worth and uncertainty, presenting a maze of detail and figures. (*City of Louisville v. Cumberland Tel. & Tel. Co.*, 225 U. S. 430.) Without suggesting in any way that the public service corporations have not acted with utmost good faith, we can see the opportunity, as did the Legislature, for the intentional delay in these proceedings whereby unwarranted profits may be obtained. The fixing of a reasonable rate by these public service corporations, who enjoy from the public such valuable franchises, to be of any value, should be a matter of speedy regulation. The courts should not encourage such *finesse* in figuring as to make these hearings upon rate questions an obstruction instead of a relief. Of course caution must be used on both sides, for the desire for improper gain is oftentimes as eager with the consumer, or his spokesman, as with the corporation.

"Recognizing the present-day conditions surrounding the difficulty in determining the proper rate, we come back to the question: Is it possible for the law, Legislature or Congress to provide for a temporary rate, pending these lengthy hearings? The Legislature evidently had in mind all that I have here said regarding the *Prendergast* case and the difficulties there pointed out when in 1934, by chapter 287 of the laws of that year, it added section 114 to the Public Service Law.

• • •" (Page 371.)

## *Requirements of a Legal Statute Fixing Temporary Rates*

"We note at once that the temporary rate shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation of the physical property of the utility company used and useful in the public service. At least there is some accuracy in these figures; they can be fixed with some certainty and are not dependent altogether upon speculative expert opinion. (*Clark's Ferry Bridge Co. v. Public Service Com.*, 291 U. S. 227.)

"These are not all the factors, however, which must be taken into consideration in fixing finally a fair return or rate, or any rate for that matter, which has the effect of being final. According to *Smyth v. Ames* (169 U. S. 466) other elements must be considered in order to ascertain capital value—the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property, and the particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters of consideration and are to be given such weight as may be just and right in each case. Other elements besides these may enter into the problem, according to circumstances. (*West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662.) Therefore, we must conclude, in fact it is apparent and conceded that if this temporary rate, fixed according to this added



section, is to be final, or has any element of finality, it is unconstitutional and void.

"We cannot imagine the Legislature, in the face of the *Prendergast* case, doing such a foolish thing as reenacting, though in different language, a law giving the Public Service Commission power to do that which the United States Supreme Court had determined it could not do. The Legislature, evidently by section 114, intended to meet the criticism in the *Prendergast* case and to follow the way impliedly pointed out for a proper law. If the courts required the public utility company to put up a bond to pay back to the consumers the overcharges which it had exacted, pending a hearing, why was it not just as feasible and legal to turn the remedy about and provide that the consumers or the public should make good to the company the loss which it may have sustained in temporarily exacting too little? This is what our Legislature has done, and this we think is the meaning which we must give to its language, if it is to have any sense at all in the light of the past." (Pages 372-373-374.)

#### *Provisions for Recoupment of Any Loss Sustained During the Temporary Rate Period*

"The Commission fixes a temporary rate pending the hearing. It is based upon the elements stated, which are not all of those required to fix a permanent rate. As before stated, this would be impossible, if we must consider in fixing a temporary rate all the elements required for the final rate: no temporary rate could ever be fixed. This also is self evident. Therefore, to meet these con-

ditions the temporary rate is fixed, within reasonable limits, upon figures which can be with some exactness obtained from the books of the company, showing original cost or investment; and if finally, when the proceeding ends, the temporary rate is proved to have been too low, the utility must be permitted and authorized to charge enough for its service to make up the loss. The consumer must pay what he should have paid, and the only way to do it is to fix a rate high enough to make up this loss.

“True it is that all the consumers paying the final rate, including the take-up, may not be the same as those who paid the temporary rate. A few consumers may be new customers paying what the old consumer should have paid. Such instances are of minor importance, the percentage must be very small. We can never work our institutions of government if we refine matters to such an extent that we have to consider all these little details. The Constitution expresses fundamental principles, and if in the main these have been observed, this is all that can be required. Besides, when we speak of the consumer—the customer—we mean the public, not individuals. (*San Diego Land & Town Co. v. Jasper*, 189 U. S. 439.)

“Anyhow, this is no concern of the company, for its complaint here is that because of the temporary rate it will suffer loss. If the loss is made up to it in the final rate the objection is obviated. That the Commission is authorized, in fact compelled, to make up this loss, if any, through the final rate, is the meaning and must be the meaning of these words in section 114: ‘The commission is

hereby authorized in any proceeding in which temporary rates are fixed \* \* \* to consider the effect of such rates in fixing \* \* \* rates \* \* \* on final determination \* \* \* 'Experience'—how much better this is than expert testimony, whether dealing in history or prophecy. (*Willcox v. Consolidated Gas Co.*, 212 U. S. 19; *City of Knoxville v. Knoxville Water Co.*, 212 U. S. 1; *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655, 669.)

"This section, as we have said, forces the Public Service Commission to consider the returns from the temporary rate and to establish the permanent rate, or the final rate, accordingly; that is, if the temporary rate has proved to be too low the final rate must make it up to the company. Over what time it is necessary to provide a rate sufficient to make up the loss, or to include the take-up, is a matter of adjustment, machinery and method. These matters are all in the hands of the Public Service Commission, which may increase or modify a rate to meet the circumstances at any time. Here is no *nunc pro tunc* rate as in *Oklahoma Natural Gas Co. v. Russell* (261 U. S. 290)." (Pages 374-375.)

### *Court's Conclusion*

"We, therefore, are of the opinion that this law is not unconstitutional; that it meets the defects in prior procedure, and affords the company ample protection as well as the consumer. It is a fair attempt to meet the time element, which is necessary to be considered in rate-fixing hearings." (Page 375.)

**Conclusion.**

In conclusion the Public Service Commission of the State of New York urges that this Court determine:

1. That section 310 of the Public Utility Law of the State of Pennsylvania is constitutional.
2. That the injunction restraining the enforcement of the order of the Pennsylvania Public Utility Commission fixing temporary rates should be dissolved.

Respectfully submitted,

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January, 1939.



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No. 509

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*In the Supreme Court of the United States*

OCTOBER TERM, 1938

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DENIS J. DRISCOLL ET AL., APPELLANTS

v.

EDISON LIGHT & POWER COMPANY

---

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

BRIEF FOR THE UNITED STATES AMICUS CURIAE

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# In the Supreme Court of the United States

OCTOBER TERM, 1938

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No. 509

DENIS J. DRISCOLL ET AL., APPELLANTS

v.

EDISON LIGHT & POWER COMPANY

---

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

BRIEF FOR THE UNITED STATES AMICUS CURIAE

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## OPINION BELOW

The opinion of the District Court for the Eastern District of Pennsylvania is reported in 25 F. Supp. 192.

## JURISDICTION

The opinion and decree of the District Court were filed October 14, 1938. The jurisdictional statement was filed by the appellants December 6, 1938, as required by Rule 12 of this Court; and probable jurisdiction was noted on December 19, 1938.

## STATUTES INVOLVED

The statutes involved are Sections 309 and 310 of the Pennsylvania Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053; Purdon's Pa. Stat. Ann. 1937 Supp., Title 66, Sec. 1150) which provide in pertinent part:

309. Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in any wise in violation of any provision of law, the commission shall determine the just and reasonable rates (including maximum or minimum rates) to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this act. \* \* \*

310 (a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depre-

ciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

310 (e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates



finally determined if applied during the period such temporary order was in effect.

#### STATEMENT

On January 27, 1936, the Pennsylvania Public Utility Commission instituted an investigation to determine the reasonableness of the rates of Edison Light & Power Company under the provisions of the Regulatory Law of the Commonwealth of Pennsylvania (1913 P. L. 1374). On June 1, 1937, during the progress of this investigation, the Utility Law of Pennsylvania was recodified and the Legislature enacted the Public Utility Law of 1937, *supra*, p. 2. Section 310 of the new Public Utility Law authorizes the Commission to prescribe temporary rates, pending the final determination of rates. The effect of the temporary rates must be considered by the Commission in prescribing final rates. The Commission gave appropriate notice of its intention to prescribe temporary rates and after hearing and argument it issued a temporary rate order directed to the Edison Light & Power Company on July 27, 1937. The order directed the Company to file a designated tariff schedule calculated to effect a reduction of its gross annual revenues in the amount of \$435,000. (R. II, 1124.) A bill in equity was filed by the Company in the United States District Court for the Middle District of Pennsylvania. A temporary restraining order was issued by the Court to enjoin the enforcement of the Commis-

sion's order. The case was heard before a specially constituted three-judge District Court convened pursuant to the provisions of Section 266 of the Judicial Code. On October 15, 1937, the District Court permanently enjoined the enforcement of the order of the Commission, each of the judges writing a separate opinion. *Edison Light & Power Co. v. Driscoll et al.*, 21 F. Supp. 1, 5, 6. District Judge Johnson and District Judge Watson held that the temporary-rate provisions of the Public Utility Law did not violate the Federal Constitution but that the order of the Commission failed to indicate the basis for the findings upon which the Commission based its rate reduction order. Circuit Judge Davis was of opinion that Section 310 (a) and (e) of the Act was unconstitutional because, he stated, it permitted the Commission to fix rates as low as five per cent upon the original cost, less accrued depreciation, without considering the other elements of value which this Court has indicated must be considered in establishing a fair return on the fair value of the property used and useful in the public service.

Following this decision the Commission issued a supplementary temporary rate order in which it reviewed much of the evidence considered by it and set forth the basis for its findings (R. I, 15-39). The Commission again ordered the Company to effect an adjustment in its rates calculated to result in a reduction in its annual gross operating rev-

enues in the sum of \$435,000 (R. I, 38). The Commission's order indicated that consideration had been given to reproduction cost evidence, original cost evidence, and other pertinent matters in the record (R. I, 17-28). The Commission found the original cost depreciated to be \$4,258,000 and the reproduction cost depreciated to be \$4,901,803 (R. I, 29). The Commission found the fair value of the property for the purpose of prescribing temporary rates to be \$5,250,00 (*Ibid.*), and allowed a rate of return of 6% thereon (R. I, 29-31), or \$315,000 (R. I, 37). For purposes of temporary rates the Commission disallowed certain claimed expenses, and allowed total operating revenues, including the return of \$315,000, in the amount of \$1,697,829 (R. I, 31-37). The actual experience of the company for the twelve-month period ending September 30, 1937, showed operating revenues of \$2,202,329, or an excess of \$504,500 over the revenues determined by the Commission to be allowable (R. I, 37). The tariff prescribed was designed to reduce the gross revenues in the amount of approximately \$435,000 per annum (*Ibid.*).

On November 30, 1937, the Company filed a bill to enjoin the order of the Commission in the United States District Court for the Eastern District of Pennsylvania. The specially constituted District Court, convened pursuant to the provisions of Section 266 of the Judicial Code, issued a temporary injunction. After testimony was taken and arguments heard, the court permanently enjoined the enforcement of the Commission's order. *Edison Light*

& *Power Co. v. Driscoll et al.*, 25 F. Supp. 192. In an opinion by Circuit Judge Davis, the court held that Section 310 (a) of the Public Utility Law was unconstitutional since it did not provide for the weighing of certain elements of value which this Court had said were pertinent in *Smyth v. Ames*, 169 U. S. 466.<sup>1</sup> The court further held that even if the section were constitutional in its procedural aspects, the temporary rate order of the Commission was invalid for the reason that the return permitted was confiscatory, fair value being taken as the rate base and certain expenses rejected by the Commission being allowed.

#### QUESTIONS DISCUSSED HEREIN

The court below dealt in its opinion with two questions: whether the temporary rate provision of the Pennsylvania statute afforded a valid standard for determining compensatory rates; and whether the rates prescribed were in fact compensatory under any proper standard. The second question,

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<sup>1</sup> The elements which this Court has stated should be considered in determining the fair value of a public utility enterprise and upon which Judge Davis relied in his opinion were stated in *Smyth v. Ames*, 169 U. S. 466, 547, as follows: "and, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

involving matters of fact peculiar to this case, is not of concern to the United States, and is not discussed herein. The first question, however, is of serious concern to the United States. It is our position that the temporary-rate provision is valid, and that the rate order should be sustained if it conforms thereto.

The question of the validity of the temporary rate provision has a twofold importance to the Federal Government. In the first place, the decision below holds that such a provision, even in the setting of the provisions for final rates and recoupment, is incompatible with the requirements of the Fourteenth Amendment. This holding, if permitted to stand, would presumably constitute a barrier to the Federal Government should it attempt to employ a temporary rate procedure like that here in question. In the second place, there is ground for concern lest the validity of the temporary rate provision be deemed to rest on an implied requirement that final rates be fixed on the basis of fair value, including the elements of reproduction cost. It is believed that the rule of *Smythe v. Ames*, 169 U. S. 466, should not be reaffirmed but should be reconsidered, and that the temporary rate provisions can be sustained independently on the ground that a reasonable rate of return on original cost or prudent investment constitutes a sound standard for the determination of nonconfiscatory rates under the due process clause of the Fifth and Fourteenth Amendments.

This brief will, consequently, discuss two questions: (1) The validity of the temporary-rate provision as a step in the process of rate-making prescribed by the statute; and (2) the independent validity of the temporary rate provision as embodying a proper standard for rate-making.

#### SUMMARY OF ARGUMENT

1. The temporary-rate provisions are valid as a step in the rate-making progress. The rate base, original cost less accrued depreciation, is readily determined, and the interests of the company are fully safeguarded by recoupment provisions. The procedure is analogous to the suspension of a rate reduction order on the furnishing of a bond by the company to repay charges found later to be excessive. A statutory provision similar to that here assailed has been sustained by the New York Court of Appeals. *Bronx Gas and Electric Co. v. Maltbie*, 271 N. Y. 364; see also *Edison Light & Power Co. v. Driscoll*, 21 F. Supp. 1 (M. D. Pa.).

2. The temporary-rate provisions are valid independently considered. They provide for a fair return on original cost less depreciation. Original cost, under present accounting requirements, is readily ascertainable, and is a proper rate base, which ought not be rejected unless it is shown to differ substantially from prudent investment. The principle of prudent investment as the rate base should be approved, in the light of experience calling for a reconsideration of the rule of fair value announced in *Smyth v. Ames*.

The rule of fair value is unsound in principle,



thing which is devoted to the public service and on which a compensatory rate must be permitted. The unsoundness of the rule is enhanced by the use of a rate of return which is comparable to the prevailing rate of return in other businesses, measured in the latter case, however, on the basis of investment.

In practice the rule of fair value, with its requirement of consideration of reproduction cost, produces results which are unreliable, arbitrary, and absurd. Estimates of reproduction cost show irreconcilably large divergences. A rate measured on the basis of so-called fair value may appear to be confiscatory while in fact the company is prospering.

~~The rule of fair value has resulted in a break~~  
down of the process of rate regulation. It is costly, protracted, and in final result unsound. Regulatory commissions and professional opinion have increasingly urged abandonment of the rule in favor of prudent investment as a rate base.

#### ARGUMENT

##### I

THE TEMPORARY-RATE PROVISION, AS A STEP IN THE RATE-MAKING PROCESS, IS CONSTITUTIONAL

The rate order was issued pursuant to a statute providing for the promulgation of temporary rates. The statute in question provides that the Commission shall have the power to prescribe temporary rates to be charged by a utility within its jurisdiction "pending the final determination of such rate

proceeding.” The statute provides further that such temporary rates shall be sufficient to provide a rate of not less than five per centum upon the original cost, less accrued depreciation, of the physical property when first devoted to public use.<sup>2</sup> It is then provided that in every proceeding in which temporary rates are determined the Commission shall consider the effect of such rates in prescribing rates to be demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined are in excess of the rates prescribed in the temporary rate order, then the utility in question shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined such sum as shall represent the difference between the gross income obtained from the rates prescribed in the temporary order and the gross income which would have been obtained under the rates finally determined. In such final determination the Commis-

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<sup>2</sup> For the purposes of this brief the following definitions will be adopted:

“Prudent investment”—the amount reasonably and honestly invested by the present owner in the public utility properties used and useful in the public service.

“Original cost”—the actual legitimate cost of the property to the company first devoting it to the public service.

When used for rate-base purposes, prudent investment and original cost are subject to reduction for actual depreciation.

“Reproduction cost”—the estimated cost of reproducing the existing property of the utility which is used and useful

sion is limited to the establishment of "just and reasonable rates (including maximum and minimum rates)" Sec. 309.

From a constitutional standpoint, the temporary character of the rate order and the recoupment provisions of the Pennsylvania law are of primary importance. The establishment of temporary rates is but a step in the administrative process of promulgating just and reasonable rates for utility services. The first step is the process of valuing the company's property on the basis of its original cost less accrued depreciation. The rate-making period commences with the second step when temporary rates are fixed on the basis of this valuation. The concluding step in the process is directed to a determination of the final rates, which shall be just and reasonable, for the entire rate-making period, including the initial period during which the temporary rates were in effect. There is no such finality to these temporary rates as to preclude the Pennsylvania Commission from thereafter disregarding its findings or changing the entire basis of its order upon a final determination. On the contrary, such a change is anticipated by the express requirement of the statute that the effect of such temporary rates must be considered and adjusted upon a final determination. Until this final determination takes place the status of the temporary rates is not fixed to the extent that the Commission has completed its process of rate

regulation.<sup>3</sup> One of the numerous advantages of the establishment of temporary rates is that it makes the experience factor available to the Commission before the determination of final rates. If conclusions based on other calculations prove contrary to the actual experience attending the temporary rate period, the calculations will be disregarded and the utility will be permitted to recoup any losses it may have sustained. On the other hand, actual experience may indicate a more reliable basis for fixing final rates. It may show that lower rates have so stimulated and increased the use of service that the result would be a lower unit cost. In many cases the furnishing of additional service without substantial changes in plant and equipment may more than compensate for the losses caused by lower rates and actually result in the same or an increased net earning. In any event, it is apparent that the establishment of temporary rates under the Pennsylvania statute is but a single step in the entire process of rate regulation. The principle is pertinent that the courts will not interfere with the process of administration until it is completed and the Constitutional rights of the parties are actually in jeopardy. *Federal Power Commission v. Metropolitan Edison Co. et al.*, 304 U. S. 375; *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41.

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<sup>3</sup> See Berkson, *Revitalizing Rate Regulation*, 9 St. John's L. Rev. 332, 341 (1935).

The temporary-rate procedure resembles that by which a court issues a temporary injunction. The procedure is fully supported by the converse practice of suspending the establishment of lower rates on the giving of a bond by the utility company for the return to the consumers of any excess payments as finally determined.

This Court in *The New England Divisions Case*, 261 U. S. 184, held that a temporary rate order issued by the Interstate Commerce Commission, pending the determination of a final rate proceeding, did not violate the constitutional rights of rail carriers. A temporary rate order was issued by the Commission prescribing a division of joint rates among numerous railroads and increasing the division or share which the New England roads were to receive. The order was made before complete analysis of all available evidence, was to continue in force until further order of the Commission, and was left open for correction upon the application of any railroad. This Court, in sustaining this provisional action by the Commission, stated (p. 201):

A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation some changes in it will have to be made. To grant under such circumstances immediate

relief, subject to later readjustments, was no more a transfer of revenues pending a decision, than was the like action, in cases involving general increases in rates, a transfer of revenues from the pockets of the shippers to the treasury of the carriers. That the order is not obnoxious to the due process clause, because provisional, is clear. If this were not so, most temporary injunctions would violate the Constitution.

New York adopted in 1934 a statutory provision which was doubtless the prototype for that involved in this case.<sup>4</sup> The New York statute, like that of Pennsylvania, authorizes the Commission to establish and consider the results of temporary rates, based upon original cost, less depreciation, and to make appropriate adjustments for losses when determining the final rates. The New York Court of Appeals held that the New York temporary-rate provision was constitutional. *Bronx Gas and Electric Co. v. Maltbie*, 271 N. Y. 364, 3 N. E. (2d) 512. The Court of Appeals in that case, recognizing the complexity of the administrative task of determining reasonable rates, held that the legislature could appropriately provide such a temporary-rate procedure. The Court emphasized the fact that such a statutory provision protected the utility through a recoupment procedure.

The recoupment provisions of the Pennsylvania law completely protect the utility against any loss

<sup>4</sup> N. Y. Pub. Serv. Law § 114 (c. 287 Consolidated Laws, 1934).



which might result from the establishment of confiscatory temporary rates. In an earlier stage of this proceeding, a majority of a specially constituted District Court so held. *Edison Light & Power Co. v. Driscoll*, 21 F. Supp. 1 (M. D. Pa.), Davis, J., dissenting. The opinion of this Court in the case of *Prendergast v. New York Telephone Co.*, 262 U. S. 43, relied on by the court below, is not contrary to this position. That litigation involved a temporary-rate order of the New York Commission issued pursuant to a statute which made no provision for the repayment of losses which might result from such temporary rates. In the course of its opinion, this Court said (p. 51):

Here the Commission had prescribed temporary rates which were found to be confiscatory, which were to continue in effect pending the final determination of the Commission after its investigation had been completed; and no date had been fixed for the completion of this investigation or the final hearing. The Company, meanwhile, could only be protected from loss by injunction; while on the other hand, its subscribers were protected by the bond which was required for the return of the excess charges collected if the injunction should be thereafter dissolved:

Any rate order, whether it be temporary or final, which provides for an inadequate return, in the absence of statutory recoupment provisions such as provided in the Pennsylvania law, will confis-

cate the utility's property, since a utility cannot recover past losses by future rates. *Oklahoma Natural Gas Company v. Russell*, 261 U. S. 290. But the *Prendergast* case plainly implies that, had proper statutory provision been made to reimburse the utility for possible loss resulting from temporary rates, the utility could not have supported a claim of confiscation. This, in effect, is the holding of the New York Court of Appeals in the *Bronx* case after the New York Legislature amended the New York Public Service Law to provide for the recoupment of past losses suffered under temporary rates.

During the World War and immediately thereafter, many local rate regulatory bodies established emergency rate increases at the request of public utilities within their jurisdiction.<sup>5</sup> During this period of rapidly rising prices the utilities found themselves unable to meet operating costs in the face of rates which had been adjusted on a lower price level. To meet this situation, many local commissions granted emergency increases without entering into an extended investigation to consider all the elements of value and cost which this Court has said are pertinent to such an investigation. These emergency rate orders were sustained by the courts. *La Crosse v. Railroad Com-*

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<sup>5</sup> See the discussion of this problem in *Illinois Commerce Commission v. Public Service Company of Illinois*, 4 P. U. R. (N. S.) 76.

mission, 172 Wis. 233; *Chicago Railroad Company v. Chicago*, 292 Ill. 190; *Hoyne v. Chicago etc. Railroad Company*, 294 Ill. 413; *Kansas City etc. v. Public Service Commission*, 276 Mo. 539; *Omaha etc. Railroad Company v. State Railroad Commission*, 103 Neb. 695; *O'Brien v. Public Utility Commissioners*, 92 N. J. L. 587; *New York v. New York Telephone Company*, 115 Misc. 262, aff'd. 202 App. Div. 796; *Muskeyee Gas & Electric Company v. State*, 81 Okla. 176. Similarly, during the period of falling prices after 1921, temporary rate reductions were upheld by the courts in the absence of a clear showing by the utility that such rates were confiscatory. *Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission*, 283 Fed. 215 (E. D. La., 1922); *Rockland Power & Light Co. v. Maltbie*, 241 App. Div. 122, 124, 271 N. Y. Supp. 858, 861; *Oklahoma Gas & Electric Co. v. Corporation Commission*, 83 Okla. 281. Under present-day conditions the procedure whereby a regulatory body is permitted to establish temporary rates for the benefit of the consumer with adequate provision for recoupment in the case of loss to the utility, fills a long felt need in the administration of our public utility laws."

The provision for the establishment of temporary rates subject to recoupment is legally, as

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<sup>a</sup> Swidler, *The Uncertainties in the Legal Status of Temporary Rates* (1934), 12 Pub. Util. Fort. 136, 202.

has been indicated, similar to the practice of requiring utilities to post a bond for the protection of the consumer upon an application for a suspension of a proposed rate. But the temporary-rate procedure has certain superiorities. The posting of a bond by a utility obtaining a suspension order has not served adequately to protect against excessive charges or to speed up the process of rate regulation.<sup>7</sup> For various reasons many customers have not received their refunds when the proposed rates were eventually sustained by the courts. In many instances the refund procedure has proved to be extremely expensive, a cost which the consumer must ultimately bear. *St. Joseph Stockyards Co. v. United States*, 298 U. S. 38, 88-92. Under the existing method of permitting the Company to obtain a suspension of proposed rates upon the filing of an adequate bond, utilities are generally indifferent to the delays which inevitably result from protracted appeals to the courts.<sup>8</sup> The procedure contemplated by the Pennsylvania statute removes the burden from consumers who are compelled to pay excessive rates during the entire period, fre-

<sup>7</sup> *International Ry. Co. v. Prendergast*, 52 F. (2d) 293, 298 (W. D. N. Y. 1930); *Louisville & M. R. Co. v. Railroad Commission*, 208 Fed. 35, 60 (N. D. Ala. 1913).

<sup>8</sup> See note (1936), 36 Col. L. Rev. 1177, 1179; (1936), 31 Ill. L. Rev. 404, 406.

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quently years, in which the rates are being subjected to judicial scrutiny. The temporary-rate procedure places a premium upon prompt adjudication of the merits of any rate controversy.

The temporary-rate procedure possesses other advantages. It is the only method which permits the Commission to utilize the valuable experience obtained under temporary-rate orders in the establishment of final rates. This Court has indicated on many occasions that whenever actual experience is available it will be given a predominant place in the determination of reasonable rates. *Knorville v. Knorville Water Co.*, 212 U. S. 1; *Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, 289 U. S. 287; *West Ohio Gas Co. v. Public Utility Commission of Ohio*, 294 U. S. 63, 70. Under the provisions of the Pennsylvania statute, the experience factor is made available to the Commission before the determination of final rates. It is noteworthy that this procedure affords a valuable device whereby the relationship of lower rates to increased use may be tested by experience, while the utility is protected against loss during the period of experimentation. The converse relationship between higher rates and decreased use may also be tested by the temporary-rate procedure. The practical advisability of providing a background of experience for the use of the Commission in predicting the results of its final rate orders can hardly be questioned.



The fact that the temporary rates are to be sufficient at least to yield a fixed percentage return upon the original cost less depreciation of the property devoted to the public service is not constitutionally objectionable. This Court has never held that the consideration of original cost by a regulatory commission in the establishment of a rate base was a denial of due process of law. On the contrary, it has been held that original cost is a proper element to be considered in the promulgation of reasonable rates. *Smyth v. Ames, supra*; *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S. 151; *Los Angeles Gas & Electric Corp. v. Railroad Commission of California, supra*.

A temporary rate provision, such as the one involved in this case, makes it possible for a public utility commission to regulate rates more effectively in the public interest. Under the present fair value rule of rate-making it would be impossible for a public utility commission to consider all the elements required before prescribing temporary rates. The reproduction cost element to which this Court has attached predominant significance under existing conditions requires months and sometimes years to determine.<sup>9</sup> Original cost under the present uniform system of accounts prescribed by most regulatory commissions is a readily obtainable and reliable calculation. See Appendix D, *infra*, p. 139. The advantages and benefits of the

<sup>9</sup> See pages 47-52, *infra*.

temporary-rate procedure will be completely nullified if it is necessary for the Commission to take into consideration all the elements which this Court has suggested are pertinent in the establishment of a final rate base.

## II

THE TEMPORARY RATE PROVISION INDEPENDENTLY CONSIDERED IS CONSTITUTIONAL SINCE IT PERMITS A FAIR RETURN ON THE AMOUNT PRUDENTLY INVESTED IN THE PROPERTY OF THE UTILITY

Independently of the temporary character of the rate procedure held invalid by the court below, it is submitted that the procedure should be sustained because it conforms to the constitutional requirement that a utility be permitted to earn a fair return on its property. The court below took the position that the standard for the determination of compensatory rates must be the fair value of the property. The rule of fair value, with its emphasis on reproduction cost, has, we submit, been proved unsound in principle and unworkable in practice. Rarely has a judicial doctrine been subjected to criticism so widespread, so vigorous, and so unremitting.<sup>10</sup> It is our position that the proper rate base, conforming to the applicable constitutional and economic criteria, is the amount prudently invested in the property of the utility.

<sup>10</sup> See note 40, p. 68, *infra*, and Appendix A, pp. 71-126, *infra*.

Before proceeding, however, to a discussion of the fair value rule and the prudent investment rule, we shall indicate the relation between the amount prudently invested and the original cost, the latter being the base prescribed in the temporary rate provision of the Pennsylvania statute. It will be evident, we believe, that there is no essential reason for distinguishing between prudent investment and original cost in determining the validity of the provision in the Pennsylvania statute here in question.

#### A. THE RELATION BETWEEN ORIGINAL COST AND PRUDENT INVESTMENT

Original cost is a reasonable basis for the establishment of rates because there is a high degree of exactness to that figure and in all cases it should be the same as or approximate prudent investment.<sup>11</sup> Prudent investment may be defined as the amount reasonably or honestly invested by the present owner in the public utility properties used and useful in the public service. Original cost is defined by the uniform system of accounts for public

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<sup>11</sup> "The statute designates the original cost of the Company's property used in the public service, less accrued depreciation as such rate base. The choice is not arbitrary. Original cost though not conclusive is always a factor in every valuation. Of all the elements considered in determining fair value it is the most definite, stable, and easily ascertainable. It constitutes a rough index to fair value upon which the final rate of return is to be computed." Berkson, *Revitalizing Rate Regulation*, 9 St. John's L. Rev. 332, 353-354 (1935).

utilities and licensees issued by the Federal Power Commission, effective January 1, 1937, as follows: "Original cost \* \* \* means the cost of such property to the person first devoting it to public service." In many instances prudent investment will be the same as original cost. It will be the same for (a) property constructed by the present owner (except in the rare instances of construction which serves no useful purpose) and (b) properties purchased by utilities, except for property purchased as a going concern by one utility from another. A majority of the public utility properties have undoubtedly been constructed by the utilities which now own them. As to these properties, original legitimate cost and prudent investment are synonymous. Ordinarily the difference between prudent investment and original cost arises through the acquisition of properties by one public utility from another. The purchase price of the property thus acquired may or may not represent prudent investment. Many such transactions have been between affiliated interests and the additional price paid over original cost represents no more than fictitious profits.

In such cases it would be unsound to accept the purchase price as the best indication of the prudent investment in the properties. However, there may be many acquisitions of property by one public utility from another which are at "arms length" and in the public interest. In those cases, the purchase

price would probably represent the best evidence of the prudent investment in the properties. In many instances the book accounts of the public utility reflect without adjustment the prudent investment in such properties, but it must be remembered that numerous companies in the electric industry have inflated their capital accounts to such an extent that the resulting figures are useless in arriving at a prudent investment estimate. The investigation of the Federal Trade Commission in its report on public utility corporations indicates that the practice of inflating the accounts of electric utilities has been widespread.<sup>12</sup>

The systems of accounts now generally prescribed for telephone, electric, and gas utilities provide that the property or plant accounts must be stated on the basis of original cost, meaning the cost of such property to the person first devoting it to public service. It is further provided that any difference between original cost and the book amount of the utility plant shall be recorded in "acquisition adjustment" accounts. The constitutionality of the original cost provision in the system of accounts prescribed by the Federal Communications Commission has recently been sustained by this Court in *American Tel. & Tel. Co. v. United States*, 299 U. S. 232. The system of accounts for electric

<sup>12</sup> Report of the Federal Trade Commission to the Senate of the United States on Public Utility Corporations, January 28, 1935. S. Doc. 32, Part 73A, 70th Cong., 1st sess.

apply the rate of return on investments in industries in general (with elimination, of course, of speculative profits) to the *investment* in public utilities. But it distorts the comparison and leads to double compensation when prices are high, to apply the rate arrived at in the manner indicated not to investment but to a base influenced by high prevailing prices. The rate of return measured by investment should be applied to investment, but only a rate of return on "value" should be applied to value; the two rates should not be confused.

It has been stated that the end sought is just compensation for the use of properties devoted to the public service. The rates of return which are being made on *investment* in other business undertakings, which are attended by corresponding risks and uncertainties, when applied to the reproduction cost of public utility property, cannot but work a hardship on either the utilities or the consumers. During periods of high price levels, the hardship is on the consumers. Conversely, when low prices prevail, the hardship is on the companies because a low rate would be applied, theoretically at least, to a low base. If this principle were strictly adhered to in depression periods, severe and, perhaps, disastrous consequences to the utilities would inevitably ensue. A literal compliance with the reproduction cost principle permits the utility to reap the profits of every type of unearned increment which accrues to monopolistic or semi-monop-



olistic enterprises.<sup>15</sup> The inclusion of this element in a rate valuation penalizes the consumer by transferring to the utility valuation the appreciation in property and equipment which is generally attributable to the efforts of the community at large including the consumers of the utility service. It is submitted that the use of the unearned property increment as an element of value, at least for rate-making, is wholly unjustifiable as a matter of sound economic theory or legal principle.<sup>16</sup>

*2. The rule produces unreliable, arbitrary, and absurd results*

As a matter of practice the two chief elements most commonly considered in arriving at fair value under the rule are original cost and reproduction cost.<sup>17</sup> This Court has indicated that

<sup>15</sup> For a condemnation of the inclusion of the item of appreciation as an item in the value of the utility see the discussion in the Report of the Federal Trade Commission to the Senate of the United States on Public Utility Corporations, January 28, 1935. *Op. cit.* p. 25, note 12.

<sup>16</sup> See the letter from Mr. W. R. McCann criticizing the appreciation element in reproduction cost estimates submitted to the Special Committee of the American Society of Civil Engineers. *Report of the Special Committee to Formulate Principles and Methods for the Valuation of Railroad Property and Other Public Utilities* in 81 Transactions of the American Society of Civil Engineers, 1311, 1618-1619 (1917).

<sup>17</sup> Booth, *Prudent Investment, Fair Value, and Public Utility Regulations*, 1 Nat. Lawyers Guild Q. 229, 234 (1938). The author is the general counsel of the Illinois Commerce Commission.

neither element is entitled to full weight but has failed to specify how much weight should be accorded each element. As stated in *McCardle v. Indianapolis Water Company*, 272 U. S. 400, 410:

\* \* \* this does not mean that the original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure [of fair value]. The weight to be given to such cost figures and other items or classes of evidence is to be determined in the light of the facts of the case in hand.

The utter impossibility of taking two widely divergent amounts arrived at on wholly different bases, the one (original cost) subject to rather exact measurement and the other (reproduction cost) speculative in the extreme, and combining them reasonably so as to produce a legally sufficient result, has led public utility regulatory agencies to make a polite bow to the elements mentioned, but to employ in fact either prudent investment or reproduction cost as the sole criterion of value. It is wholly unreasonable to expect any commission or any court to combine or compare or weigh \$10,000,000 representing the investment in electric plant, \$15,000,000 representing one engineer's appraisal thereof, and \$8,000,000 representing another engineer's appraisal, in such manner as to arrive at present fair value without producing a result arbitrary or at best unreliable.

The main difficulty with the fair value doctrine lies in the reproduction cost element. This element cannot be regarded as value *per se*. The mere fact that an article would cost a great deal to reproduce today is no evidence at all that it is worth the cost of reproducing it. The cost of reproducing the street railways in the United States would run into enormous sums, but it is common knowledge that such railways are not being built but rather are being abandoned because they are unable to earn their way. The fair value principle, by emphasizing reproduction cost, ignores the economic worth or value of property by substituting therefor an arbitrary criterion. Whether or not the street railway industry is economically sound is of no moment to the valuation engineer. He blindly pursues his policy of valuing what he sees and adds lump sums for the intangibles he cannot see. The engineer values what he finds even though the property would never be reproduced in its present form, even though the market value might be nil, or merely the price of salvage. Despite these uncertainties the estimated cost of reproducing the plant and equipment finds its way into the appraisal which is presumed to represent "value."<sup>18</sup>

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<sup>18</sup> "First, the only possible argument in favor of cost of reproduction springs from the analogous use of cost of reproduction in private competitive business. \* \* \*. But the cost of reproduction so far as utilized in establishing prices in private business is not the cost of reproducing the identical property but the cost of reproducing an equally

The theory of reproduction cost, to have any value, must be deemed to have some connection with market value. Yet by its very nature such cannot be the case. There is, generally speaking, no market value for public utility properties; the reproduction cost theory attempts to supply that which does not exist. Value in the last analysis means exchange value—the ability to command other commodities or services in exchange—and this necessarily leads to market value, which is not and can not be synonymous with reproduction cost.<sup>19</sup>

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serviceable property. Or, let us say, it is the cost of reproducing the article or service, or an equally useful article or service, and never the cost of reproducing a particular plant. In truth, invention and improvement work changes in all industrial operations so rapidly that it is difficult to find any plant a few years old which would be reproduced by competent engineers in the same form today. Therefore, to utilize the idea of cost of reproduction intelligently is not to utilize the cost of reproduction of any particular property but of a service or of an equally useful service. It must be apparent that such a basis for rate making would open up a new field for speculative estimating, to the increased profit of engineers and lawyers and to the increased confusion of the courts and commissions and would bring increasing instability to all public utility operations." Richberg, *A Permanent Basis for Rate Regulation* (1922), 31 Yale L. Rev. 263, 277.

<sup>19</sup> In one of the more recent publications the fallacy of using reproduction cost as a measure of value is stated by the authors as follows: "In exchange-value economics the real value of a plant is not determined by the cost of reproducing the identical plant but by the cost of producing the commodity in a new plant having the most modern equip-

The reproduction cost factor is particularly inappropriate as applied to property of electric and communications utilities. It is common knowledge that great strides have been made during the last decade in the science of producing, transmitting, distributing, and utilizing electric energy. The same may be said of the telephone and telegraph industries. There are still in existence old plants, middle-aged plants, and modern plants of every sort and description. Regulatory bodies are prohibited from applying the substitute-plant principle, *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 417, 418; hence there is no recourse but to value the property used in public service. This means, as far as public utility valuation engineers are concerned, that old structures, old poles, and old equipment must be valued on the basis of what it would cost to reproduce them today even though they are not, in fact, being produced and would not

ment required to produce the article. No one would be willing to invest in an obsolete plant if a new one could be built to be operated at much lower operating expenses per unit of production if such a plant could be built for the same cost as the obsolete one. It is the cost of building a modern plant of similar capacity that determines the value of a plant in an unregulated competitive industry, and not the cost of reproduction of a similar plant. Hence, reproduction cost does not cause the owners of a regulated enterprise to fare the same as the investors in unregulated competitive enterprises." Wilson, Herring, and Eutsler, *Public Utility Regulation*, 126 (1938).

and regulations designed to clarify the various units of physical property in their relation to the original cost of such property. These supplemental records are known as "continuing property records." The Pennsylvania Commission has issued orders requiring all electric utilities whose fixed capital exceeds \$100,000 and all natural and manufactured gas utilities with annual gross operating revenues in excess of \$100,000 to maintain continuing property records. It is conceivable that within a reasonable period of time most of the public utility commissions in this country will have readily available under these progressive accounting systems a statement in dollars of the amount of capital invested in the property used in the public service. Until such adjustments are made, regulatory authorities should not be restrained from utilizing readily available and reasonably accurate property accounts on an original ~~cost~~ basis which in most instances approximates the prudent investment figure.<sup>14</sup>

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<sup>14</sup> "This does not mean that it would be desirable for the Court to substitute for the rule in *Smyth v. Ames*, a requirement that rates must in all cases yield a fair return on actual prudent cost. A state's policy which fixes rates on that basis cannot be pronounced the only one that is not 'arbitrary'. The line between those rate regulations that are arbitrary and those that are not, like the line between other valid and invalid exercises of the police power, can better be left to be pricked out as future occasions arise." Hale, *Conflicting Judicial Criteria of Utility Rates* (1938), 38 Col. L. Rev. 959, 976.



B. THE FAIR VALUE RULE WITH ITS EMPHASIS ON REPRODUCTION COST HAS PROVED TO BE UNSOUND AND UNWORKABLE

The court below held that the rate base must satisfy the rule of *Smyth v. Ames*, commonly known as the "fair value" rule. It is suggested that if the rule of *Smyth v. Ames* were prescribed by statute and were *res integra* in this Court, the rule would have great difficulty in surviving the test of due process of law ordinarily applied to legislation. The rule, as forty years of experience has shown, is unrelated to the end sought, the allowance of a compensatory return on property devoted by investors to the public service; it produces arbitrary, unreliable, and absurd results; and it results in a breakdown of the regulatory process.

1. *The rule is unrelated to the end sought*

The constitutional requirement governing the determination of public utility rates is that the utility shall be permitted to earn a compensatory return on the property which it has devoted to the public service. What has been thus devoted is the capital invested in the business, and it is on this that the owners of the enterprise are entitled to a fair return. This was pointed out by Mr. Justice Brandeis, concurring, in the *Southwestern Bell Telephone Co.* case, 262 U. S. at 290:

The so-called rule of *Smyth v. Ames* is, in my opinion, legally and economically unsound. The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital em-

barked in the enterprise. Upon the capital so invested the Federal Constitution guarantees to the utility the opportunity to earn a fair return.

The rule of *Smyth v. Ames* embodies the fundamental misconception that it is "value" which has been embarked in the enterprise and on which the investors are entitled to a compensatory return.

There is a further consideration which makes the fair-value rule unsound in principle. In measuring the rate of return, recourse is had to profits and economic conditions generally. The profits of business in general must of necessity, for purposes of comparison, be based upon investment, since that is the basis of accounting and financial reporting. As stated in *Bluefield Water Works, Etc. Co. v. Public Service Commission*, 262 U. S. 679, 692:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on *investments* in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. [Italics supplied.]

When rates of return on *investments* increase, it does not follow that the same or even any increase

is reflected upon a *fair value* basis. In fact, it is common knowledge that during the period from 1926 to 1929 rates of return on the value of securities actually decreased very substantially, although during the same period higher rates of return for public utilities were prescribed by this Court (*United Railways v. West*, 280 U. S. 234). If when rates of return in industry in general are high as based upon investment, but low as based upon the only evidence of value we have, namely, value of securities, and the computed high rates are applied not to investment but to the estimated reproduction cost of properties, a double defect occurs: (1) the application of the rate of return is faulty; and (2) the basis on which it is applied, reproduction cost, is speculative.

This point, we respectfully submit, is worthy of careful consideration. The rate of return on *investment* during the boom years did increase, but as Appendix B, *infra* pp. 127-129, shows, the rate of return greatly decreased on the basis of the market values of securities. Thus in Appendix B it is shown that if 1926 be taken as 100, the index of earnings of composite industries, as related to stock prices, was 78.7 in 1927, 73.9 in 1928, 66 in 1929, 53 in 1930, etc. Thus, increased rates of return based upon *investment* are not attended with increased rates of return based upon market value of securities or, as far as can be ascertained, on market value of properties. It would be proper and consistent to

be reproduced under any imaginable circumstances.<sup>20</sup>

In practice, the indefensible character of reproduction cost figures stands out in bold relief. In arriving at estimated reproduction cost, two essen-

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<sup>20</sup> In analyzing the inappropriateness of reproduction cost in its relation to rate regulation, the minority members of the New York Commission on Revision of Public Service Commissions Law stated: "Even if one assumes that the *value of the property*, somehow conceived, is the proper basis of rate control, it by no means follows that cost of reproducing a substantially similar plant even roughly measures that value. This fact must be evident if we take the analogy of any unregulated business property, or of an ordinary commodity used for consumption. The value of a dwelling house, for example, is not measured by the cost of producing a replica unless it may be assumed that, were the existing house destroyed, its owner would find it expedient to build another one just like it. Even more striking is the difference between the value of the assets of a growing, progressive business enterprise and their cost of reproduction. These assets, to be sure, may still be in use, and giving what would be called 'good' service; yet many of them are not giving as good service as could be produced by the most modern type of plant and equipment, constructed in the best possible location and adapted to existing conditions of demand and of industrial technique. An intelligent appraiser, to be sure, might estimate the replacement cost of these properties as a starting point, but, in that case he would write down the reproduction costs ruthlessly, perhaps to a mere fraction of the cost new, as a recognition of the fact that obsolescence, inadequacy, and physical depreciation have greatly impaired their present worth. This, at least, would be the practice of an appraiser who wishes to secure an honest valuation rather than a bloated statement for purposes of 'dressing' the balance sheet." Minority Report, Commission on Revision of Public Service Commission Law (1930), Vol. I, 345.

tials are necessary: (1) a complete inventory of property, and (2) a pricing of the items in the inventory.

In computing the inventory, it is necessary to obtain the quantity of physical properties by units of measurement. This means that the size and nature of all structures must be determined, the generating equipment must be listed in detail, the poles must be counted and classified as to size and kind and physical conditions, the miles of wire, by kind and size, must be established, the miles of underground conduit and conductors and the kind and nature thereof (even though not visible because they are below the surface of the ground) must be estimated in some fashion. All property units, therefore, must be either counted, measured, or weighed. Furthermore, the inventory, to have the semblance of scientific precision, must show whether the structure, poles, conduits, etc., are imbedded in soft soil, clay, or rock, and these conditions cannot be determined with any degree of certainty, again because, not being visible, they must be the subject of guesswork. The eye cannot see nor the hand measure all the items which must in some manner or other be accounted for in the hypothetical appraisal. Moreover, the physical condition of all the properties, visible and invisible, must be recorded in the field notes, and allowance made for such condition in computing the so-called "observed depreciation." When it is remembered that telephone, telegraph, and electric power prop-

utilities in which the original cost system is utilized was issued by the Federal Power Commission on June 6, 1936, and that system of accounts was adopted and prescribed by the Public Utility Commission of Pennsylvania as of January 1, 1937. The systems of accounts for electric and gas utilities providing for original cost accounting was adopted by the National Association of Railroad and Utilities Commissioners at its convention held in November 1936.<sup>13</sup>

It must be apparent from these facts that the legislature of Pennsylvania was aware that the systems of accounts for public utilities generally provided that the original cost of facilities devoted to public use must be recorded in the accounts and consequently would be readily available to the Commission in rate-making proceedings. The availability of the original cost account, after the lapse of a reasonable period for installing the system, and the success of the New York temporary rate legislation, doubtless prompted the Pennsylvania legislature to authorize the Commission to use original cost in the establishment of temporary rates. Temporary rates prescribed on the original cost basis should be generally fair when it is recognized that prudent investment and original cost in many cases will be exactly the same figure. In other cases only relatively minor adjustments will

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<sup>13</sup> 1936 Convention Proceedings, N. A. R. U. C., pp. 93-104.



be required to determine prudent investment. It is conceivable that a comprehensive investigation and complete hearing may be required in some few instances to determine the prudent investment in a particular utility property. However, once that prudent investment has been ascertained there would seem to be no need to use original cost even in the establishment of temporary rates since the prudent investment figure would be as readily ascertainable as the original cost item. As a matter of expedience the fixing of temporary rates upon original cost as distinguished from prudent investment will likely remain only until the respective commissions can make adequate investigation in order to establish the prudent investment figure. As public utilities construct more of their own properties, the prudent investment item will constantly tend to approach the original cost figure.

Forty state commissions have authority to prescribe uniform systems of accounts and they are rapidly following the example of the Federal Power Commission and the Federal Communications Commission in prescribing that property accounts be stated on the basis of original cost. (See Appendix D *infra* p. 139.) In order to insure the prompt availability of a reliable record of original cost, certain state commissions have supplemented the uniform system of accounts by prescribing rules

cost of that property and if, under such circumstances, rates are fixed which fail to yield a "fair return" on this "fair value," those rates must be condemned as confiscatory under the doctrine of *Smyth v. Ames*, *supra*. And this is true no matter how successfully the Company may be able to operate under them, or how liberal the dividends it can pay, or how good the Company's credit may be, or what return such rates may afford the Company on its investment prudently made in properties used or useful in the public service. Thus, confiscatory rates under the "fair value" test may enable a utility to operate with outstanding success because confiscation is determined by a method which has no relation to the object sought to be attained. The glaring incongruity between theoretical "fair value" and the actual facts of experience was well illustrated by *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S. 151, in which this Court found the theory pursued irreconcilable with the actualities of operation.

No more fatal indictment can be presented against the "fair value" doctrine than that which is offered by the spectacle of successful and prosperous public utilities revealing themselves as the victims of constitutional confiscation upon the criterion of the "fair value" rule. See the dissenting opinion of Mr. Justice Black in *McCart v. Indianapolis Water Co.*, 302 U. S. 419, 435. When public utilities find it expedient, as they frequently

do, to charge rates lower than those to which they are constitutionally entitled under the doctrine of *Smyth v. Ames*, *supra*, they reveal the true character of the fair-value method of rate making.<sup>24</sup>

### 3. *The rule produces a breakdown in the regulatory process*

The fair-value rule has proved to be unworkable as part of a regulatory process. The reasons are: (1) the time required to make appraisals and valuations; (2) the unreliability of the results of that method; and (3) the enormous expense involved.

The valuation process, requiring as it does the taking of field inventories and the pricing of the inventory items, cannot be accomplished in a short space of time. Many years are frequently required and assumption upon assumption is made before the speculative result is reached. The long time required to complete a rate case has become common knowledge. The *Ohio Bell Telephone* case, 301 U. S. 292, was in process of adjudication about fourteen years. The Missouri Public Service Commission required over 8 years to reach a determination in its proceedings against the Union Electric

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<sup>24</sup> The presidents of the prosperous Consolidated Gas and New York Edison Companies testified before the Committee on the Revision of the New York Public Service Commissions Law of 1930, that it was the policy of their companies to charge rates lower than those to which they were constitutionally entitled. Minority Report, *Commission on Revision of Public Service Commissions Law* (1930), Vol. I, 351.

Light and Power Company, 17 P. U. R. (N. S.) 337; and over 7 years in its proceedings against the Ozark Utilities Company, 18 P. U. R. (N. S.) 408. The North Dakota Board of Railroad Commissioners required almost 3 years in its proceedings against the Northern States Power Company, 15 P. U. R. (N. S.) 126. The New York Public Service Commission consumed at least 5 years in determining reasonable rates for the Long Island Lighting Company, 18 P. U. R. (N. S.) 65. Twenty-seven months after the initiation of its proceedings against the Westchester Lighting Company (15 P. U. R. (N. S.) 299) that Commission stated:

To continue this proceeding to completion would require the receipt of additional testimony and evidence on the reproduction cost new of used and useful property—probably both by the company on its own behalf and by the Commission on behalf of the public—depreciation with respect thereto, rate of return, as well as completion of the testimony on and possible additional evidence relating to the market value of land and going value. Judging from past experience, at least another two years would probably be consumed in the presentation of this necessary material, which in return would require that the operating revenues, expenses, and any changes during this period be investigated and evidence presented thereon to bring them down to the date of the final determination.

In his dissenting opinion in the *McCart* case, *supra*, Mr. Justice Black included the following table to illustrate the delays in rate litigation (302 U. S. 435):

	Bill filed	Decided	Time
United Fuel Gas Co. v. Railroad Comm'n, 278 U. S. 300.....	Dec. 1923.....	Jan. 1929.....	5 years.
United Fuel Gas Co. v. Public Service Comm'n, 278 U. S. 322.....	April 1925.....	Jan. 1929.....	3 yrs. 8 mos.
Ottinger v. Brooklyn Union Gas Co., 272 U. S. 579.....	June 1923.....	Nov. 1926.....	3 yrs. 5 mos.
Ottinger v. Kings County Lighting Co., 272 U. S. 579.....	June 1923.....	Nov. 1926.....	3 yrs. 5 mos.
Ottinger v. Consolidated Gas Co., 272 U. S. 576.....	June 1923.....	Nov. 1926.....	3 yrs. 5 mos.
Patterson v. Mobile Gas Co., 271 U. S. 131.....	Aug. 1922.....	April 1926.....	3 yrs. 8 mos.
McCardle v. Indianapolis Water Co., 272 U. S. 400.....	Dec. 1923.....	Nov. 1926.....	2 yrs. 11 mos.
Average.....	.....	.....	3 yrs. 7 mos.

The proceedings before the Illinois Commerce Commission to determine rates for the Illinois Bell Telephone Company, initiated in September 1921, did not reach a final conclusion until 12½ years later, in 1934. See *Lindheimer v. Illinois Bell Telephone Co.*, 292 U. S. 151. More than ten of these years were consumed in litigation in the federal courts subsequent to the Illinois Commission's findings in the case. The *New York Telephone Company* case was instituted in 1920 and determined by the New York Public Service Commission in 1924, yet it was not until 1934 that the case was finally settled. See the concurring opinion of Mr. Justice Brandeis in *St. Joseph Stockyards Co. v. United States*, 298 U. S. 38, 90.

namely, the use of index numbers, was condemned by this Court in the *West* case, *supra*.

The inherent difficulties in administration as well as the inadequacy of the result of the use of the "fair value" rule have led to various schemes for avoiding its harshness and for speeding up the regulatory process. The most notable of these expedients is the Pennsylvania temporary rate statute involved in this case. Regulation must be free from unworkable formulae or Commission regulation is doomed, for the public is becoming increasingly weary of the long, expensive, and tedious procedure involved in public utility rate-making.

The unreliability of the results reached by an attempt to apply the fair value theory has already been dealt with in this brief. Pages 33-47, *supra*.

The third factor is the enormous cost of the process. The making of appraisals with the necessary time and tedious detailed studies costs gigantic sums.<sup>20</sup> While schemes for surmounting

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<sup>20</sup> Former Chairman William Prendergast of the Public Service Commission of New York has stated that the appraisal made by the New York Telephone Company cost that Company in the neighborhood of \$5,000,000 (Commission on Revision of Public Service Commissions Law (1930), Vol I, 381). It is estimated that the cost of determining the fair value of all utilities subject to the jurisdiction of the Public Service Commission of New York, even with the cooperation of the utility companies and the adoption of short-cut methods, would run in the neighborhood of \$10,000,000 and at least three years would be necessary to arrive at the result. (Minority Report, *Commission on Revision of Public Service Commissions Law* (1930), Vol. I, 394).



the difficulty have at times been evolved such as that for assessing the regulatory expenses against the utilities as in Louisiana (Gen. Stats. 1932, Sees. 7917.3 to 7917.5), New York (Laws, 1934, C. 282), Pennsylvania (Stats. 1920, Sec. 18163), and Wisconsin (Wis. Stat. C. 196, Sec. 85), the consuming public in the end bears the cost.<sup>27</sup>

<sup>27</sup> The expenses involved in valuation projects for rate-making purposes have been graphically described by Harry R. Booth, General Counsel of the Illinois Commerce Commission, as follows: "In connection with a case recently decided by the Illinois Commerce Commission, the Illinois Bell Telephone Company stated in its annual report that it had spent \$1,200,000 in preparation of a state-wide appraisal, and this was subsequent to huge expenditures in the *Chicago Telephone* case. In proceedings before the same Commission involving the Commonwealth Edison Company of Chicago, the company's expenditures totaled approximately \$1,000,000, a large part of which was for appraisals; and the People's Gas Light & Coke Company, also of Chicago, spent in excess of \$750,000, more than \$600,000 of which was for appraisal purposes. In Missouri, two recent cases involved expenditures, mostly for appraisal purposes. Of over \$900,000 by the Union Electric Company and nearly \$300,000 by the Laclede Gas Light Company, including the Commission's expenses in both cases. \* \* \* By some authorities it is stated that a complete reproduction cost appraisal may be expected to cost from one-half of a per cent to one per cent of the reproduction cost of the property in question. Hence, for the electric, gas, and telephone companies alone, which are reported in *Moody's Manual of Public Utilities for 1937* as having a property value of over \$20,000,000,000, the cost of making reproduction cost appraisals might run from \$100,000,000 to \$200,000,000. \* \* \* The costs incurred by utility companies for such valuations are ordinarily charged to operating expenses, with the result that they are, in effect, paid for by the consumers. Costs in-

erties extend over enormous areas and the values run into billions of dollars, that all the items represented thereby must be counted, measured, or weighed, it must be recognized that the very method begets errors and must inevitably lead to rampant speculation. It is common knowledge that no two field parties will arrive at the same inventory of physical quantities, and it is likewise common knowledge that a recheck by one field party of the work of another always discloses discrepancies.<sup>21</sup> An analysis and comparison of re-

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<sup>21</sup> The inaccuracies in the estimates by engineers employed in the valuation task are thus analyzed in a report of a committee of civil engineers engaged in that work: "The practice of those engaged in valuation work, from the beginning of such work up to the present time, has varied widely in the matter of determining the cost of reproduction. Some base such cost on existing physical conditions, others on historic conditions, and still others combine the two. Some engineers have included only those physical property units which were actually created in the construction of the property, that is, they have used historic conditions, as to items of cost, with present-day prices for labor and material. Others have used substitute units, or historic prices, or original instead of present methods of work, and still others have used original conditions, original prices, and original methods, in making an estimate of reproduction cost. \* \* \* This failure of engineers engaged in valuation practice to agree on a uniform conception of reproduction has cast some doubt on the real worth of Cost of Reproduction as one of the measures of value." *Report of the Special Committee to Formulate Principles and Methods for the Valuation of Railroad Property and Other Public Utilities* in 81 Transactions of the American Society of Civil Engineers 1311, 1359 (1917).

production cost estimates utilized in a large number of rate cases reveals a startling variation in their substance. (See Appendix C, *infra*, pp. 130-138.)

But that is not all. The property items or units, after inventory, have to be assembled, grouped, classified, and then priced. The pricing process is a monstrous example of guesswork.<sup>22</sup> The present reproduction cost of old equipment which is no longer manufactured can be computed only by some sort of legerdemain. Current prices of such items

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<sup>22</sup> In analyzing one of the opinions of this Court involving a question of valuation for rate-making purposes, it has been observed: "In addition to the expert guessing contest involved in estimating reproduction cost, according to present or past prices, the opinion also adds an additional gambling factor in requiring 'an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future.' For at least one hundred years (and probably for several thousand years) commerce has been offering its greatest prizes to men who could make honest and intelligent forecasts of future prices. Today the management of any large business would pour wealth into the lap of the inspired genius who could make such forecasts. The question is presented as to whether, when such forecasts are impossible (as they are most of the time) public utility commissions should make any effort to regulate public utility rates. Relying upon past prices alone, it would become evident in practically every case, by the time the case reached the Supreme Court, that there had not been an 'honest and intelligent forecast' of future prices. The illusion \* \* \* that a reliable forecast of future prices can be made, is on a par with the illusion which also radiates from the opinion, that there is such a thing as a 'relatively permanent price level.'" Richberg, *Value—By Judicial Fiat*. (1927), 40 Harv. L. Rev. 567, 572.

are not and cannot be known, but the amount they would cost if they were manufactured in some devious manner must be computed. The cost of labor, involving, in turn, an estimate of labor hours and labor price, must be estimated and myriad items of expense, including hypothetical interest which was never incurred, in some manner determined.

The results so unscientifically computed are necessarily permeated with inaccuracies. That such results are inaccurate is known to every public utilities commissioner. The results of any two engineers arrived at independently are and will be far apart on any large property. (See Appendix C.) In the words of Mr. Justice Holmes, in commenting on a rate case, "every figure that we have set down with delusive exactness [is] speculative." *City of Louisville v. Cumberland Telephone and Telegraph Co.*, 225 U. S. 430, 436. As pointed out by the former chairman of the Public Service Commission of Indiana, "no two engineers, taking the same property, the same unit prices, and the same locality, can arrive at the same figure." 55 Amer. Bar. Assn. Rep. 799 (1930). Commissioner Joseph B. Eastman of the Interstate Commerce Commission, in a concurring opinion in the *O'Fallon Railway* case said: "With cost of reproduction now exceeding original cost in most cases by anywhere from 50 to 80 percent, it is clear that a method of determining value for rate-making purposes which

leaves to unguided judgment the weight to be given such widely divergent factors cannot produce satisfactory results and must be made more definite" (124 I. C. C. 3, 52).

A classical example of the wide variations in determining fair value under the reproduction cost theory is contained in the dissenting opinion of Mr. Justice Stone in *West v. Chesapeake & Potomac Telephone Company*, 295 U. S. 662, 691, note 7. The reference shows the following variations in results obtained by engineering appraisals of the telephone property as found in the record of *New York Telephone Company v. Prendergast*, 36 F. (2d) 54:

Estimating body	Valuation	Increase over the Commission valuation
Majority of Commission.....	\$366,915,493	1
Statutory Court.....	397,207,925	8.2%
Minority of Commission.....	405,502,993	10.5%
Master's report.....	518,109,584	41.2%
Company claim based on Whittemore appraisal.....	528,753,738	44.1%
Company claim based on Stone & Webster appraisal.....	615,000,000	67.1%

There was in that case a possible error of almost two hundred and fifty million dollars. It must be evident that no group of men, no matter how well trained or informed, could by any process of reasoning come to any proper conclusions from the so-called evidences of value in that case. Only by arbitrary or capricious action could any finding of fair value be agreed upon by a group of men

charged with that duty. It is submitted that a method which is so inherently defective and inevitably unreliable cannot qualify as a *sine qua non* of reasonableness in law.<sup>23</sup>

The experience cited above is not isolated or unique; it is typical of the prevailing experience of all regulatory bodies which deal with "fair value." There is shown in Appendix "C," *infra* pp. 130-138, a comparison of estimates of reproduction cost arrived at in 123 rate cases reported for the years 1928 to 1933, inclusive. *The average variation is shown to be 51.50 percent.*

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<sup>23</sup> As to the significance of the *New York Telephone* case, *supra*, the following observation has been made: "Herein lies the real significance of this case. While it may have lasted considerably longer than the average utility rate proceeding, it is nevertheless typical of the problems and difficulties involved in all rate cases. It illustrates particularly the fact that the *measure* of return to which a utility is entitled is never clear and definite under the prevailing regulatory system. The reciprocal rights of the utilities and the public remain undefined and variable even after most exhaustive investigation. The more thorough the work, the longer it lasts and therefore the more likely it becomes obsolete before final decision. \* \* \* This lack of definiteness as to the fundamental factors of rate control is the bane of the existing regulatory process. It is responsible for virtual breakdown of regulation. It creates and perpetuates conflict of interest. It produces trumped-up evidence, protracted hearings, futile appeals, prohibitive expense, and makes systematic regulation as a regular administrative process an impossibility." Gold, *An Example of Rate Litigation and Its Significance* (1934), 23 Nat. Mun. Rev. 584, 587.



This court may reasonably conclude from its own knowledge and from the facts disclosed in Appendix C that the reproduction cost estimates of the properties of a large public utility can be little more than a matter of conjecture or speculation. Regulatory agencies, it is respectfully submitted, ought not to be compelled, against their better judgment, to resort to conjecture and speculation in fixing the prices of services which are so vital to the comfort, well-being, and convenience of our citizens. This Court said in the *West* case, *supra*, 295 U. S. at 675:

It is apparent from what has been said that here the entire method of the commission was erroneous and its use necessarily involved unjust and inaccurate results.

That method (the improper use of price indices) was condemned because it produced unjust and inaccurate results. We submit that a method of rate-making which *requires* as an essential component a consideration of reproduction cost is open to even graver objection. The fair-value theory, with its concomitant emphasis on reproduction cost, should not be imposed upon those charged with the duty of seeing that utilities and consumers alike are treated fairly in the fixing of rates.

The "fair value" method of rate-making has led to conclusions demonstrably unsupportable in the face of actual experience. The "fair value" of a utility's property may be many times the actual

It is impossible to keep the regulatory process current under the prevailing rule, and unless that rule is changed the paralyzing delays in fixing proper rates which it makes inevitable will continue to cripple utility regulation.<sup>23</sup> Many utilities in the United States have never had their property valued and others have had but one valuation in the comparatively long history of valuation in this country. This Court is familiar with the experience of the Interstate Commerce Commission in its efforts to arrive at the fair value of railroad properties in this country. During the period from

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<sup>23</sup> Concerning the inability of regulatory authorities to carry on their function of rate making under the present system of valuation, one writer has observed that "it slows up regulation and in a great measure makes it ineffective. In practice it takes so much time to decide the question of rates when it is dependent upon a valuation, that, at best, but few cases can be decided by a state authority in a year. Where the authority has a hundred or more companies under its supervision, as is usually the case, it is obvious that there can be but little regulation of their rates. Regulation, to be effective, should be reasonably prompt. If the company needs relief, it should receive it promptly; otherwise the relief prayed for may not suffice when granted, as during the time of protracted hearings the situation may be going from bad to worse and the loss must be compensated by additional increases in the rates. On the other hand, if the public is entitled to a reduction it should receive it promptly, as earnings, by the decisions of the courts, become the property of the corporation and any excess in rates paid by the consumer can never be recovered by him. \* \* \*". Attwill, *Weaknesses of the Valuation System*, 159 *Annals of the American Academy of Political and Social Sciences* (January 1932) 96, 98. The author is a former chairman of the Massachusetts Department of Public Utilities.

See also Goddard, *The Evolution and Devolution of Public Utility Law*, 32 *Mich. L. Rev.* 577 (1934).

1913 to 1931, approximately \$178,000,000 was expended by the Government and by Class I carriers in their attempt to carry out the valuation process. (Testimony of Mr. Alfred P. Thom, General Counsel of the American Railway Executives Association before the Committee on Interstate and Foreign Commerce of the House of Representatives, February 5, 1932). It is common knowledge that the difficulty in the application of the rule of *Smyth v. Ames*, *supra*, to railroad valuation was in no small measure the direct cause of the amendment of Section 15a of the Interstate Commerce Act to eliminate the necessity of recurrent valuations. (See testimony of Commissioner Joseph B. Eastman before the Committee on Interstate and Foreign Commerce of the House of Representatives, January 19, 1932.)

The very involvements of the fair value method destroy it as a rate-making expedient. With some fluctuations in price occurring daily, valuations made as of one year, after many years of effort, are obsolete by the time they are determined. When it is remembered that frequently several years are required to make an inventory and appraisal, which becomes obsolete twelve months thereafter, the criticism that the regulatory process is unworkable must be recognized as well founded. No approved process whereby valuations such as discussed herein can be kept current or computed quickly has ever been devised. One noteworthy attempt designed to accomplish this purpose,

best served if regulation makes as its *fundamentally guiding principle* an attempt to protect investments honestly and prudently made and wisely managed. Any other theory \* \* \* makes every rate case an almost interminable and labyrinthine inquiry into values with endless conflicts between so-called experts.<sup>37</sup> [Italics in original.]

In one of its recent cases the California Railroad Commission stated that its advocacy of the prudent investment theory was based on the following considerations:

The historical method of valuation \* \* \* in rate proceedings is well grounded upon established facts, is not subject to the vagaries of pet theories, unlimited imagination and abrupt fluctuations of current prices and passing conditions, and therefore, indicates a truer measure of value upon which, through the application of rates, a return may be allowed to reimburse the owner for his enterprise and insure the integrity of his capital honestly and prudently invested. \* \* \*

<sup>37</sup> *Second Annual Report of the Public-Service Commission of Massachusetts* (1914), Vol. I, 99, 107. See also the opinion of the former Chairman of the Massachusetts Department of Public Utilities contained in an article devoted to the work of that agency. Attwill, *Weaknesses of the Valuation System*, 159 *Annals of the American Academy of Political and Social Sciences* (1932), 96.

<sup>38</sup> *Re Pacific Gas & Electric Co.*, 1 P. U. R. (1933) (N. S.) 1.

The same commission has expressed the same opinion in many other of its cases. *National City v. Sweetwater Water Corp.* (1933), 3 P. U. R. (N. S.) 405; *Re Coast Valleys G. & E. Co.*, P. U. R. 1924C 49; *Re Southern California Telephone Co.*, P. U. R. 1922C 97; *Re San Joaquin Light & Power Corp.*, P. U. R. 1922D 595; *Re Fresno Traction Co.*, P. U. R. 1925C 566. The prudent investment theory has in fact been discussed and advocated in many decisions by local commissions as a sound solution to the existing difficulties of the rate-making procedure.<sup>39</sup> Following the decision of this Court in the *Pacific Gas & Electric Company* case, 302 U. S. 388, the Wall Street Journal

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<sup>39</sup> *Re Sea Cliff & G. C. Gas Co.* (New York Public Service Commission), P. U. R. 1921A, 211; *Re Boise Artesian Water Co.* (Idaho Public Utilities) (1923), 11 Ann. Rep. Idaho Public Utility Commission 155; *Marinette v. City Water Co.* (Wisconsin Public Service Commission) (1934), 9 P. U. R. (N. S.) 308; *Milwaukee El. R. & Light Co. v. Milwaukee* (Wisconsin Public Service Commission), P. U. R. 1918E, 1; *Re Northern States Power Co.* (North Dakota Board of Railroad Commissioners), 15 P. U. R. (N. S.) 126; *Grand Forks v. Red River Power Co.* (North Dakota Board of Railroad Commissioners) (1935), 8 P. U. R. (N. S.) 225; *Barth v. Hughes & D. Electric Co.* (North Dakota Board of Railroad Commissioners), P. U. R. 1922A, 740; *Re Midwest Power Co.* (North Dakota Board of Railroad Commissioners), P. U. R. 1922E, 22; *Cavanaugh v. Whitefish Municipal Water Utility* (Montana Board of Railroad Commissioners), P. U. R. 1922E, 198; *Re Platte County Independent Telephone Co.* (Nebraska State Railway Commission), P. U. R. 1922D, 303; *Pacific T. & T. Co. v. Thomas* (Oregon Public Utilities Commission) (1936), 13 P. U. R. (N. S.) 337.

conomic waste involved in the fair value method must be eliminated and there must be substituted a plain and adequate remedy. The fair value doctrine has had a fair trial, but by the verdict of forty years of regulatory experience it has been found hopelessly wanting.

**C. PRUDENT INVESTMENT AS A RATE BASIS IS SOUND AND WORKABLE**

1. The basic fallacy underlying the fair value doctrine is the assumption that "value" rather than "property" has been devoted to the public use. As previously indicated, the object sought to be attained by the limitations of the due process clause is just compensation to those who have devoted their property to the public use. What the Constitution requires is a fair rate of return on the investment of a utility in property used and useful in the public service. The thing devoted to the public use by the investor is not specific property but capital embarked in the utility enterprise. Upon the capital so invested the due process clause of the Constitution guarantees to the utility the opportunity to earn a fair return. The Constitution does not guarantee to a utility or its investors the opportunity to earn a return either on the "present value" of all the property used by the enterprise or the "cost of reproducing" the property used by the enterprise. This interpretation of due process of law was stated by Mr. Jus-



tice Brandeis in his concurring opinion in the *Southwestern Bell Telephone* case, *supra*, as follows (262 U. S. at 290-291):

The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His company is the substitute for the State in the performance of the public service; thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. Cost includes not only operating expenses, but also capital charges. Capital charges cover the allowance, by way of interest, for the use of the capital, whatever the nature of the security issued therefor; the allowance for risk incurred; and enough more to attract capital. The reasonable rate to be prescribed by a commission may allow an efficiently managed utility much more. But a rate is constitutionally compensatory, if it allows to the utility the opportunity to earn the cost of the service thus defined.

This view of investment as the vital factor accords with the position of economists. As stated by Professor Glaeser of the University of Wisconsin:

Since public utilities render a service which must be supplied continuously they should be regulated upon a theory that they are or will become going concerns. They are secured in their market position by means of governmental grants which are either ex-

pressly monopolistic or tend to become such under the pressure of noneconomic competition. They have voluntarily invested their capital upon the implied assurance that they will be permitted to earn reasonable returns. Under modern conditions of regulation the investment of capital may even be compelled by governmental authorities or it is at least invested subject to governmental authorization and approval. Under these conditions of regulated monopoly, the true economic standard for determining the rate base is the investment standard.<sup>29</sup>

2. Prudent investment affords a stable rate base, with all its accompanying advantages to investors and consumers. These have been summarized in the opinion of Mr. Justice Brandeis, concurring in the *Southwestern Bell Telephone Co. case*, *supra*, 262 U. S. 276, 289, 306:

The adoption of the amount prudently invested as the rate base and the amount of the capital charge as the measure of the rate of return would give definiteness to these two factors involved in rate controversies which are now shifting and treacherous, and which render the proceedings peculiarly burdensome and largely futile. Such measures offer a basis for decision which is certain and stable. The rate base would be ascertained as a fact, not determined as matter of opinion. It would not fluctuate with

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<sup>29</sup> Glaeser, *Outlines of Public Utility Economics* (1927), 505.

the market price of labor, or materials, or money. It would not change with hard times or shifting populations. It would not be distorted by the fickle and varying judgments of appraisers, commissions, or courts. It would, when once made in respect to any utility, be fixed, for all time, subject only to increases to represent additions to plant, after allowance for the depreciation included in the annual operating charges. The wild uncertainties of the present method of fixing the rate base under the so-called rule of *Smyth v. Ames* would be avoided; and likewise the fluctuations which introduce into the enterprise unnecessary elements of speculation, create useless expense, and impose upon the public a heavy, unnecessary burden.

Investors rightly expect a return on the capital which they put into the enterprise rather than on the imaginary fair value or reproduction cost of the property.<sup>30</sup> The advantages of a stable rate

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<sup>30</sup> "It is a fair assumption that, in general, investors in establishing public utilities have looked to a fair return on their actual investment to compensate them for their outlay, and have not taken seriously into account any appreciation or depreciation in the value of land or in the price of labor and materials entering into the reproduction cost of structures and equipment. They have necessarily assumed that they would be able and would be permitted to receive for their service an amount equal to their actual cost of production, *i. e.*, operating expenses, depreciation, and interest and profits on their actual capital outlay. \* \* \* The normal actual capital cost as a basis for rate determination, moreover, has a distinct advantage from the standpoint of public

base from the standpoint of investors in the enterprise were thus emphasized by a committee of the Investment Bankers Association:

So nearly as possible, a stabilized basis of property valuation should be developed. This is easier said than done, but candid effort can surely remove some of the chief causes of instabilities that are dependent on variations in commodity price levels and in varying rates of depreciation and obsolescence. Present deflation of values but emphasizes the disturbing effect of too fluctuating bases of value. To arrive at what is fair will call for mutual concessions—from public regulatory bodies, of preconceived notions that often have reflected political expediency rather than economic and basic considerations; from private ownership, of other preconceived ideas of the rights of private property in a regulated business imbued with a public responsibility and trust. Preconceived notions need to be reappraised or set aside, in favor of the answer to be found only after an un-

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policy. It is desirable that rate schedules should have stability and should not fluctuate with the price of iron pipe or copper wire or with real-estate activity or reactions. A utility is not established for the purpose of speculating in copper wire or iron pipe or land. It must, however, in furnishing its service, invest its money permanently in these things. The utility should not be expected to assume the risks of fluctuations in the price of the land and materials it uses." Whitten, *Fair Value for Rate Purposes*, 27 Harv. L. Rev. (1914) 419, 425-426.

biased solution that will more nearly represent public and private rights than any yet applied. This Committee cannot but believe that a sound economic solution will sooner or later receive judicial sanction.<sup>31</sup>

The advantages from the standpoint of the consuming public and the regulatory commissions are self-evident. Protracted, costly, and unsatisfactory controversies over valuation are obviated. Rates can be fixed currently, with a minimum of delay. These considerations are among those that have led many state utility commissions to advocate the adoption of the prudent investment standard.<sup>32</sup>

3. There is no constitutional impediment to the fixing of a stable rate base. It has already been pointed out that prudent investment is the most appropriate base since it recognizes the fact that it is capital, not value, which has been devoted to the public service and on which a fair return

<sup>31</sup> Commercial and Financial Chronicle (November 21, 1931).

<sup>32</sup> "The State commissions have been strongly in favor of the prudent investment rate base advocated by the Utility Consumers National Policy Committee. They have been in favor of it, among other reasons, because of the expense and delay caused by minute valuations of utility plants and the many speculative technical and highly controversial features such valuations involve. This attitude of the state commissions was referred to in the dissenting opinion of Mr. Justice Brandeis in the Southwestern Bell Telephone Case in favor of prudent investment at the rate base." Spurr, *Has Utility Regulation been Reduced to Negotiation and Wheedling?* 21 Pub. Util. Fort. 262 (1937).

must be permitted. The result of the prudent investment standard is that only one variable is employed in the rate making process—the rate of return. This factor gives assurance that the permissible returns of public utilities will be comparable to earnings on investments in other business undertakings attended by corresponding risks and uncertainties. In times of prosperity the rate of return will be increased, and in times of depression decreased. By adjusting the rate of return the income of the utility can be raised or lowered within permissible limits, thus accomplishing all that has been claimed for the fair value rule. The dual standard of high rates of return on high rate bases in times of prosperity and low rate of return on low rate bases in times of depression, inherent in the fair value rule, does not and cannot afford just compensation for the use of property devoted to the public service. Just compensation is rightly measured on a basis with which the world at large is familiar and which business men, financiers, and utility managements themselves employ in their every-day transactions. Under this standard profits may and should fluctuate with economic conditions through a flexible rate of return, but the base itself, like the investment base in other businesses, will not fluctuate with changes in the price level and with pseudo-scientific estimates of reproduction cost.

4. There are special reasons which make it appropriate to reconsider the rule of fair value and



to replace it with the principle of prudent investment.

The rule of *Smyth v. Ames, supra*, was perhaps the only standard which could have been applied at the time it was enunciated by this Court. In 1898, when the rule was announced, regulatory accounting was practically nonexistent in most states. The modern movement toward uniform accounting methods and procedure for local utilities started with the Wisconsin and New York systems which were promulgated in 1908.<sup>33</sup> Since that time, however, accounting regulation has become a major function of public service commissions so that today approximately forty commissions have prescribed a system of accounts for electric utilities. Appendix D of this brief, *infra* p. 139, contains a list of the state commissions which possess such authority over the accounting practices of public utilities.

It is common knowledge that large amounts of inflation crept into the property accounts of steam railroads during the construction era of their development. Consequently, the accounting book figures in 1898 were wholly unreliable as a basis upon which to compute a just and proper rate.<sup>34</sup> It would appear too from the cases starting with

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<sup>33</sup> Bentley, *Bibliography of Works on Accounting by American Authors* (1935), Vol. II, 336.

<sup>34</sup> *Report of the Federal Trade Commission to the Senate of the United States on Public Utility Corporations*, January 28, 1935, *Op. cit.* p. 25, note 12.

*Munn v. Illinois*, 94 U. S. 113, and ending with *Smyth v. Ames*, *supra*, that the courts were in a dilemma and were seeking the most reasonable approach to a difficult and troublesome problem. See the opinion of Mr. Justice Brandeis, concurring, in *Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S. at 298-299. The fair value theory in the economic era prevailing in 1898 was about the only theory at that stage of regulatory accounting which appeared to present any satisfactory solution to the problem. It was probably assumed that reproduction cost could be ascertained with a high degree of accuracy. But the intervening forty years have demonstrated beyond peradventure of a doubt that inaccuracy is the most notable feature of reproduction cost appraisals. *Bay State Rate Case*, P. U. R. 1916F, 221, 233. The fair value rule has thus been explained historically:

With construction reaching back into a dim accounting past, or with the early books destroyed, it is little wonder that in the earlier cases the courts turned away from actual cost, deeming it a thing which could not be ascertained and looked with welcome on estimates of reproduction cost which they were led to believe could be accurately made and readily verified.<sup>35</sup>

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<sup>35</sup> Whitten & Wilcox, *Valuation of Public Service Corporations* (2d Ed. 1928), Vol. I, 530.

When it is considered that we have now had a long period of accounting and security regulation as well as control of mergers and consolidations of utility properties it must be recognized that the situation which called for the decision of *Smyth v. Ames*, *supra*, is no longer existent. When that decision was rendered by this Court it was not generally appreciated that the fair value theory becomes more complicated and difficult of application as utility properties grow in size and expand their operations.<sup>30</sup> What might have been a simple rule thirty years ago becomes today a confounding rule when applied to the huge interstate public utilities like those which are subject to the jurisdiction of federal regulatory agencies. It is important to note here that the present trend of public utility development is toward the merger of operating companies into increasingly larger units.

Despite the fact that this Court has repeatedly approved the doctrine of *Smyth v. Ames*, *supra*, to limit the authority of state regulatory bodies to utilize the prudent investment standard, it has nevertheless been advocated by many state commissions. The Massachusetts Commission has stated:

\* \* \* in the long run, the rate-paying public as well as the investing public will be

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<sup>30</sup> Goddard, *The Evolution of Cost of Reproduction*, 41 Harv. L. Rev. (1927) 550, 566-567.

The burdens of present day rate-making have been so great that commissions have frequently abandoned the attempt to secure through normal channels of regulation reductions in rates to which consumers were entitled. The New York Commission has stated that "consumers have appreciated that it is better to secure a reduction in rates promptly, even though it may not be as large as should be made, in their opinion, and even though it may not be as large as might be ordered by the Commission after a rate case had been conducted, extending over months and perhaps years, and possibly to be litigated in the courts. \* \* \*

It may be pointed out that practically the Commission can cover a wider territory and deal with many more cases by negotiation than it can through formal proceedings. The latter consume far more time of the Commission and its limited staff, with the result that where negotiations with ten companies may be concluded in a few months, it would require several years to make the inventories, appraisals, accounting reports, and engineering investigations which rate cases would require." *1931 Annual Report New York Public Service Commission, Vol. I, p. 8.*

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curring by cities and public service commissions are ordinarily paid for out of taxes, which fact, of course, exerts a distinctly discouraging influence." Booth, *Prudent Investment, Fair Value and Public Utility Regulation*, 1 Nat. Lawyers Guild Q. 229, 235 (June 1938).

The Public Service Commission of Maryland has stated that it "has been making a study of the operating results of the various utilities under its jurisdiction and where its studies show that there is at least a possibility of effecting a rate reduction it is conducting informal negotiations with the utilities involved, so that the public may receive the benefits of such reductions as may be found to be reasonable and proper without undue delay." *1932 Report of Maryland Public Service Commission* 4.

The Committee on Valuation of the American Electric Railway Association has pointed out the hazards and burdens to the utility industry itself:

Such valuation proceedings, as heretofore conducted, are excessively costly, require a long period of time, affect adversely the corporation's credit, interfere with its financing upon favorable terms, and frequently cause the postponement of extensions and improvements to the great detriment of the public. Unless and until there is some change in the legal principles which must be applied in determining fair value, however, the industry cannot escape from this situation.<sup>28</sup>

If public regulation of utility rates is to succeed, these unwarranted burdens on industry, the public, and the commissions must be removed. The eco-

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<sup>28</sup> Report of the Committee on Valuation of the American Electric Railway Association (1934).

on December 28, 1937, published the results of a survey of the views of the various state regulatory commissions on the question of "fair value". The commissions that expressed their preference were two to one in favor of the prudent investment basis as the best solution to the rate-making problem. The advocacy of the prudent investment doctrine by these agencies is overwhelmingly supported by a great body of professional opinion.<sup>40</sup> We have

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<sup>40</sup> Wilson, Herring and Eutsler, *Public Utility Regulation* (1938) 126; Bonbright, *The Valuation of Property* (1937), Vol. II, 1081; Mosher and Crawford, *Public Utility Regulation* (1933) 192; Glaeser, *Outlines of Public Utility Economics* (1927) 505; Jones and Bigham, *Principles of Public Utilities* (1931) 239; Goddard, *Public Utility Valuation* (1916), 15 Mich. L. Rev. 205; Hale, *The "Physical Value" Fallacy in Rate Cases* (1921), 30 Yale L. J. 710; Richberg, *A Permanent Basis for Rate Regulation* (1922), 31 Yale L. J. 263; Whitten, *Fair Value for Rate Purposes* (1914), 27 Harv. L. Rev. 419; Egerton, *Value of the Service as a Factor in Rate Making* (1919), 32 Harv. L. Rev. 516; Henderson, *Railroad Valuation and the Courts* (1920), 33 Harv. L. Rev. 902, 1031; Dobie, *Judicial Review of Administrative Action in Virginia* (1922), 8 Va. L. Rev. 477, 504; Bonbright, *Railroad Valuation With Special Reference to the O'Fallon Decision* (1928), 18 Amer. Econ. Rev. Supp. 181; Bauer and Gold, *The Economic Merits of Original Cost and Reproduction Cost* (1928), 41 Harv. L. Rev. 593; Bauer, *Reproduction Cost and Desirable Public Utility Regulation* (1926), 2 J. of Land and Public Utility Economics 408; Beutel, *Valuation as a Requirement of Due Process* (1930), 43 Harv. L. Rev. 1240; Booth, *Prudent Investment, Fair Value and Public Utility Regulation* (1938), 1 Nat. Lawyers Guild Q. 229; Glaeser, *Comments on Legislation and Court Decisions* (1925), 1 J. of Land and Public Utility Economics 250; Goddard, *The Evolution of Cost of Reproduction* (1927),



set out in Appendix A, *infra*, pp. 71-126, a summary and analysis of reasoned expressions of this character.

The rule of prudent investment, combining as it does exactness, ease of application, and a proper principle for the determination of just compensation, is the standard for rate-making best adapted to modern business conditions and practice in this country.

The case at bar offers the Court an opportunity to write off the books an unsound and unworkable rule of rate-making. The primary ground of the decision below is that the Pennsylvania statute does not compel the Commission to consider the cost of reproduction of the company's properties in establishing its rate base. We urge that no such unreasonable requirement should longer be read into the due process clauses of the Constitution.

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41, Harv. L. Rev. 550; Gold, *An Example of Rate Regulation and its Significance* (1934), 23 Nat. Municipal Rev. 584; Hale, *Conflicting Judicial Criteria of Utility Rates* (1938), 38 Col. L. Rev. 959, 977; Lilenthal, *Regulation of Public Utilities During the Depression* (1923), 46 Harv. L. Rev. 745; Richberg, *The Supreme Court Discusses Value* (1924), 37 Harv. L. Rev. 289; Richberg, *Value—By Judicial Fiat* (1927), 40 Harv. L. Rev. 567; Wheat, *The Present As Compared With Original Cost of Construction* (1937), 20 Pub. Util. Fort. 3; Wheat, *The Regulation of Interstate Telephone Rates* (1938), 51 Harv. L. Rev. 846; Willis, *Significant Changes in Public Utility Law* (1937), 25 Georgetown L. J. 877.

In order to provide a certain amount of the clarification thus urgently needed, an analysis of the literature on the subject of valuation has been made. It is believed that a brief résumé of the principal arguments will be of assistance in an attempt to establish a sound rate base. The arguments are set forth below under appropriate subtitles.

### 1. *The illusive character of "reproduction cost"*

The most serious as well as the most obvious defect in the use of reproduction cost as a factor in the determination of utility rates is its utter lack of precision. The idea of reproduction cost is, at first blush, a simple one, and might in fact be workable in the case of a property of small size and little complexity.

The original conception of reproduction undoubtedly grew out of simple conditions, such as would be met in estimating the cost of reproducing a building or a single structure. In this case, the difference between the original cost of the building or structure and the reproduction estimate would be due wholly to changes in prices of labor and materials and the change in methods of doing work. (American Society of Civil Engineers, *Valuation of Public Utilities*, 81 Transactions (1917) p. 1362.)

The difficulty is that a utility comprises a vast amount of property which is both far flung and exceedingly complex.

This simplicity of condition does not obtain in the case of a great property, the actual construction of which has extended

over many years, many of the plant units of which have been renewed or replaced by larger ones than were originally installed, which has undergone changes and alterations, and the history and records of which have not been kept fully and completely. In such a case the making of a complete estimate of the cost of replacement or reproduction is a very involved undertaking. (*Id.*, *loc. cit.*)

The result of this situation is not only that the determination of reproduction cost is extremely difficult, but, as has been pointed out, no two experts can reach an agreement upon the figure to be used.

To this criticism of the vagueness of the court's rule as to valuation can be added another, namely, the practical difficulty of making any valuation at all. In every case examined, there has been a great conflict in evidence. Often, when two valuation experts have been employed by the same party, these experts have each made valuations that differed by a great amount. The difficulty seems to be that of making any accurate valuation of the various assets, tangible and intangible, that make up the plant of a modern public utility. (Howell, Ben R., *Recent Developments in the Application of the Rule of Smyth v. Ames in Valuation Proceedings in the Federal Courts*, 3 Tex. L. Rev. 412, 432 (1924).)

This difficulty is also recognized by the Committee on Valuation of the American Society of Civil Engineers:

The practice of those engaged in valuation work, from the beginning of such work up to

the present time, has varied widely in the matter of determining the cost of reproduction. Some base such cost on existing physical conditions, others on historic conditions, and still others combine the two. Some engineers have included only those physical property units which were actually created in the construction of the property, that is, they have used historic conditions, as to items of cost, with present-day prices for labor and material. Others have used substitute units, or historic prices, or original instead of present methods of work, and still others have used original conditions, original prices, and original methods, in making an estimate of reproduction cost.

**This failure of engineers engaged in valuation practice to agree on a uniform conception of reproduction has cast some doubt on the real worth of Cost of Reproduction as one of the measures of value. (*Op. Cit.* p. 72, at p. 1359.)**

An example of the divergence of expert opinion upon the reduction cost of a utility is set forth below, from an analysis of the New York Telephone case:

The range of "values" in this case reveals that the doctrine of present value is totally devoid of elements for objective tests. For the same property as of the same date, July 1, 1926, there were six different estimates of the fair "value" and fair "return" of the

## New York Telephone Company for rate-making purposes:

*Estimates of fair profits for New York Telephone Company  
(on intrastate business, as of July 1, 1926)*

	Fair value	Rate	Fair return
Majority of Public Service Commission.....	\$366,915,493	7%	\$25,635,000
Federal Court.....	397,207,925	7%	27,604,555
Minority of Public Service Commission.....	405,502,983	8%	32,480,800
Special Master's Report.....	518,109,584	8%	41,448,777
Company claim based on Whittenfore appraisal.....	528,753,738	8%	42,300,299
Company claim based on Stone & Webster.....	615,000,000	8%	49,200,000

The estimates of value thus ranged from \$366,915,493 to \$615,000,000, with a corresponding spread in the return thereon from \$25,635,000 to \$49,200,000. Between the two valuation estimates by the Company's own experts there was a disparity of more than \$86,000,000. Yet all these estimates purported to be based on the requirements of Supreme Court decisions, and at the end of ten years the final guess remains in doubt! Moreover, much new capital has been added since the date of these estimates, new problems of depreciation have arisen, and, indeed, the whole process of valuing the property now in use, must, according to the theory of present value, start all over again. (Frankfurter, *The Public and Its Government* (1930), p. 105.)

Similarly the striking variation of estimates in the *Indiana Telephone Case* has been described:

A typical instance of this difficulty is seen in the case of *Indiana Bell Telephone Co. v. Public Service Commission*, in which there was a difference of \$4,000,000 between the estimates of two of the commission's

good physical condition of the company's property will be taken to show that the annual depreciation allowance is excessive and that the rates may accordingly be reduced (as in the *Lindheimer* case), or to show that the "present value" is high and the rates accordingly "confiscatory" (as in *Board of Public Utility Commissioners v. New York Telephone Co.*). Certainly all of the conflicting decisions of yesterday cannot be the law of today. (Hale, Robert L., *Conflicting Judicial Criteria of Utility Rates—The Need for a Judicial Resatement*, 38 Columbia L. Rev. 959, 976, 977 (1938).)

## 2. The fallacy of the "competitive price theory"

One of the most seemingly plausible arguments which have been advanced in favor of the use of reproduction cost as a basis for valuation is that it tends to maintain rates such as would be charged under a system of competition. The competitive price theory has been stated by Professor Bonbright as follows:

According to this theory, the object of public service regulation is to deprive utility companies of the power to charge a monopoly price. Rates should therefore be fixed at a level which they would probably reach if they were regulated, not by the fiat of government, but by the forces of normal competition. But under competitive conditions the prices of services and of commodities tend to equal their cost of reproduction. Therefore, under conditions of monopoly, utility prices should be made to equal the cost of reproducing the service rendered. And by cost of reproducing the service is meant the price which would just be suffi-



cient to induce investors to put up a new plant and to give service similar to that given by the present company. (Bonbright, James C., *Depreciation and Valuation for Rate Control*, 27 Columbia L. Rev. 113, 124-125 (1927).)

From an economic standpoint there are serious flaws in the competitive price theory. It is an attempt to apply the competitive principle to a regulated monopoly by a logical *tour de force*. This is pointed out by the same authority:

In bringing to a close this discussion of the valuation problem, the point that should be stressed above all others is the folly of attempting to regulate the prices of public monopolies so that they will conform as closely as possible to the prices that are assumed to prevail under conditions of free competition. Overlooking the fact that the proposed imitation of competition is a very poor one, overlooking the fact that a governmental control of rates designed to yield a stated return on reproduction costs is not even a good caricature of the automatic control of prices that takes place in a dynamic competitive market, we must still recognize that the attempt to carry over into the field of the large-scale monopoly the same price system that is assumed to prevail in the field of the small competitive enterprise, is bound to result in a serious misfit. One reason why it is a misfit is that the competitive price system disregards so ruthlessly the financial needs of the individual producer. To the low-cost producer it yields profits far beyond the current rate of interest on invested capital; to the high-cost producer it brings defi-

## CONCLUSION

For the reasons stated, it is submitted that the temporary-rate provision of the Pennsylvania statute is constitutional.

Respectfully submitted.

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FEBRUARY 1939.

## APPENDIX A

### EXPRESSIONS OF OPINION ON THE DOCTRINE OF *SMYTH* V. *AMES* AND ON THE RULE OF PRUDENT INVEST- MENT

#### INTRODUCTION

Since the decision of this Court in *Smyth v. Ames*, there has been extensive discussion of the proper basis for public-utility rate regulation. From the first the use of reproduction cost as a factor has been the subject of acute controversy. The need for reexamination of the question in the interest of effective regulation has been thus emphasized:

The issue between reproduction cost and actual cost, in relation to "fair value" on which a "fair" return must be allowed, is of grave public importance. It leads to the question whether rate regulation is to be a success or failure, and whether regulation should be continued or abandoned. It has been under almost constant discussion during the last 10 years, and has been the chief object of contention in a vast amount of litigation, and in spite of the almost endless discussion and litigation, there is no legal-economic subject which is more confused and in need of scientific clarification. (Bauer, John, *Reproduction Cost and Desirable Public Utility Regulation*, 2 *Journal of Land and Public Utility Economics* 408 (1926).)

engineers. In this same case the difference between the highest valuation offered and the lowest was \$19,000,000, or 45 per cent of the highest estimate. Experts, working in good faith, and including the same items of valuation, arrive at results so far apart as to prove that such proceedings are of little value in determining the true worth of the property. It can thus be seen that, although the courts are working out the elements, or items, that form a proper basis for valuation, the value to be given these items can never be determined with any degree of certainty. The best that can be said for the valuation of public utilities under the present method is that the courts have by their guesses as to the correctness of the expert's guesses, made another guess as to the probable value of the utility in question as a basis for the determination of a rate which will assure a fair return on the investment. (Howell, *Op. Cit.*, p. 73, at p. 43.)

The effect of the indefiniteness of the concept of reproduction cost is that the rate basis is entirely unpredictable. The utility and the regulatory commission are, until the final decision, entirely in the dark, and so is the investor. It is for this reason, among others, that Professor Robert Hale urges the abandonment of the rule of *Smyth v. Ames*.

The time now seems ripe for the Court to overrule *Smyth v. Ames* and to repudiate the principles that the rate-making power is subject to limitations pertinent only to the power of eminent domain, and that rates, to be valid, must yield a fair return on "value." It would seem to the present writer desirable if, in a case presenting the

issue, the Court should expressly declare (What it held in effect in the *Lindheimer* case) that rates which enable the company to operate successfully and to raise the necessary money (which they do if they yield a fair return on the actual prudent cost), are valid, quite regardless of what return they yield on a "value" in the determination of which reproduction cost plays a part. This does not mean that it would be desirable for the Court to substitute for the rule in *Smyth v. Ames*, a requirement that rates must in all cases yield a fair return on actual prudent cost. A state's policy which fixes rates on that basis cannot be pronounced the only one that is not "arbitrary." The line between those rate regulations that are arbitrary and those that are not, like the line between other valid and invalid exercises of the police power, can better be left to be pricked out as future occasions arise. But counsel could at least advise clients that the validity of particular rates will be determined with reference to facts pertinent to realities. As the decisions now stand, they cannot advise whether the determination will be made with reference to such facts (as in the *Lindheimer* case), or with reference to so-called values in the determination of which no prediction can be made of the weight which the Court will attach to the various elements of actual cost, replacement cost and "going value." They cannot advise whether a company's prosperous condition will be taken as evidence of the adequacy of its rates (as in the *Lindheimer* case), or as evidence of large "going value" whose existence proves the rates to be inadequate (as in the *McCardle* case); nor whether the

cits that spell bankruptcy and ruin. As long as competition is full and free this process, harsh though it be to the unfortunate producer, may serve very well the interests of the consumer. For what matters it to him that any one producer is crippled, so long as he can turn to a more fortunate rival for his necessary services and commodities? Not so under monopoly. Not so with a railway that is alone in serving a community. Why, say the defenders of reproduction cost, should railway security holders be given any greater insurance against the fluctuations of price levels than is given to the holders of securities in an unregulated enterprise? The answer is that when the investors in small competitive enterprises fall, they may fall alone, but when the holders of railway securities fall, they force the whole community to become unwilling mourners of their downfall (Bonbright, James C., *Merits of Original Cost and Reproduction Cost*, 41 Harvard L. Rev. 593, 621-622 (1928).)

A variation of the competitive price idea has been advanced in support of the theory of reproduction cost. It has been contended that the utility investor will receive the benefit of a flexible income; his return will thus be relatively constant in terms of purchasing power. Thus, it is said, as prices rise utility values will also rise, increasing the investor's receipts and protecting him from the effects of a general rise in prices. One defect in this reasoning is pointed out in a very recent treatise upon the subject of regulation of utilities:

\* \* \* The argument that, since reproduction costs fluctuate widely this basis of valuation is more equitable, in that



the fluctuations tend to parallel the fluctuations in the general commodity price level, is partly fallacious. Reproduction costs include a large percentage of labor costs, while the percentage of labor costs in the general price level may be much less. Moreover, the general price level includes the prices of many items that are not included in reproduction estimates (Wilson, Herring & Eutsler, *Public Utility Regulation*, 1938, p. 127).

The assumption that the income of utility investors will be stabilized under such a rule contains a fundamental error:

These advocates [of the reproduction cost theory] have recently shown signs of shifting their ground while yielding to attacks upon the illogical "replacement value" theory. They have urged that the investment in the dollars of by-gone years should be translated into a "present investment," that is, the amount of money having the purchasing power of the dollars of yesterday in the commodities of today. The original investment, they suggest, was of a certain purchasing power which, although stated in money at the time of investment, must be restated now in terms of equivalent purchasing power. This claim involves the plausible suggestion that owners of public utility securities should be assured a constant income in purchasing power rather than a constant income in dollars that have a fluctuating purchasing power.

One answer to this new line of argument is that the large amount of investment in public utilities is represented in securities having a fixed return, such as bonds and

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preferred stock. It is hardly reasonable to ask the Government to provide a fluctuating return for these investors, which they will not be able to obtain, but which will be appropriated solely for the benefit of the common stockholders. Another answer is that it is hardly appropriate for the Government to establish a rule which will favor one class of investors at the expense of the entire community. The new claim that investors should be protected against loss from the reduced purchasing power of the dollar is utterly inconsistent with the old theory of basing rates upon the "value" of the property. (Richberg, Donald R., *The Supreme Court Discusses Value*, 37 Harvard L. Rev., 289, 297-299 (1924).)

This fallacy in the reasoning of the advocates of reproduction cost is pointed out in a report by the Federal Trade Commission to the United States Senate dealing, among other things, with valuation:

Far transcending any other reply to this argument of the proponents of reproduction cost, however, is that it entirely overlooks the fact that public utilities are almost wholly financed through fixed income-bearing securities, that is, bonds and preferred stocks. The Federal Trade Commission's investigation of the public-utility industry covering 91 representative operating companies engaged in the electric-light and gas business, shows that 70 percent of their capital accounts is represented by outstanding bonds and preferred stocks. What is of further significance is the Commission's disclosure that write-ups of the capital assets of these 91 operating companies approximate 23 percent, substantially all of which

was reflected in the equity stocks. In the light of these disclosures, it would be no serious exaggeration to say that the representative public utilities of the country, including railroads to a lesser extent, are more than 90 percent financed through fixed income-bearing securities.

Manifestly, fluctuations in the price level do not affect the man owning a \$1,000 bond on which he receives 6 per cent interest, so far as his dollar investment is concerned. It is clear, then, that any speculative gain or loss, due to the price level, is reflected solely in the common stocks of utilities. Yet it has not been seriously suggested by proponents of reproduction cost that all fixed income-bearing utility securities be recalled, and common stock issued in their place (Federal Trade Commission, *Summary Report to the Senate of the United States*, January 28, 1935. Senate Doc. 92, Pt. 73A, 70th Cong., 1st Sess., p. 155.)

The fact is that the use of reproduction cost tends to a result precisely opposite to that which its advocates claim for it. Rates are too high after a period of inflation and too low after a period of deflation. See Willis, Hugh Evander, *Significant Changes in Public Utility Law*, 25 Georgetown L. J. 877, 884 (1937).

### 3. *Delay and expense in determining reproduction cost*

The delay and expense involved in the determination of reproduction cost constitute a serious practical obstacle to rate regulation. The time-consuming nature of the inquiry has been referred to by Henry C. Attwill, who for many years had been

actively concerned with the practical aspects of rate regulation as chairman of the Massachusetts Department of Public Utilities. The valuation system, he writes;

\* \* \* slows up regulation and in a great measure makes it ineffective. In practice it takes so much time to decide the question of rates when it is dependent upon a valuation, that, at best, but few cases can be decided by a state authority in a year. Where the authority has a hundred or more companies under its supervision, as is usually the case, it is obvious that there can be but little regulation of their rates. Regulation, to be effective, should be reasonably prompt. If the company needs relief, it should receive it promptly; otherwise the relief prayed for may not suffice when granted, as during the time of protracted hearings the situation may be going from bad to worse and the loss must be compensated by additional increases in the rates. On the other hand, if the public is entitled to a reduction it should receive it promptly, as earnings, by the decisions of the courts, become the property of the corporation and any excess in rates paid by the consumer can never be recovered by him. . . . (*Weaknesses of the Valuation System*, American Academy of Political and Social Sciences, Annals, Vol. 159 (January 1932) p. 96.)

A student of valuation cases writes

\* \* \* an unreasonable length of time elapses before the courts are able to determine the validity of a prescribed rate. The *Pacific Gas and Electric Company Case*, reversed by the Supreme Court in 1924, and

sent back for another valuation proceeding, has been in the courts since 1913. During that time the amount collected by the company above the rate prescribed by the city has been deposited in trust awaiting the outcome of the suit.<sup>5</sup> In many other instances a period of from one to five years elapses after the publishing of a rate schedule before the validity of the rate is determined. Because changing conditions render the previous valuation of little help in determining the question of fair return after such a long time, it is often necessary to have a valuation *de novo*, with its additional expense and delay. (Howell, Ben A., *Recent Development in the Application of the Rule of Smyth v. Ames in Valuation Proceedings in the Federal Courts*, 3 Texas L. Rev. 412, 431 (1935).)

See also Lilienthal, David E., *Regulation of Public Utilities During the Depression*, 46 Harvard L. Rev. 745 (1933); Beutel, Frederick K., *Due Process in Valuation of Local Utilities*, 13 Minn. L. Rev. 409 (1929); Federal Trade Commission, *Summary Report to the Senate of the United States*, January 28, 1935, *Op. Cit.*, p. 154.

Another example of the delay involved in the determination of reproduction cost is furnished by the history of the litigation in *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S. 151:

\* \* \* The first order of the Commission in the *Lindheimer* case was issued in 1923, and the hearings preceding that order must have occupied many months. It was not until 1933 that the bill in that case was



for much of the holding company's own revenue. (*Summary Report to the Senate of the United States*, January 28, 1935, *op. cit.* p. 83, at p. 157.)

See also, Note, *Public Utilities—Rate Base—Late Supreme Court Decisions*, 34 Mich. L. Rev. 100, 107 (1935):

\* \* \* Professor Riggs, an engineer with wide experience in valuation cases, states,

"The subject of revaluation of large properties has become a matter of grave concern to officers charged with the management of utilities. Valuation work accurately and carefully done, in sufficient detail to satisfy the requirements of attorneys conducting rate or other cases involving valuation, is costly and time-consuming. \* \* \* To have expended from \$50,000 to \$500,000 for valuation of utility property within four or five years, and then to face a new valuation to meet the needs of a new case is a serious matter in the case of any company."

This expense is passed on to the rate-payers in the form of an increased allowance for overheads, and an equal expense to the Commission is likewise passed on to the public in the form of increased appropriations for valuation work—or through the failure to hold rate hearings.

The case of *Indianapolis Water Company v. McCardle*, 272 U. S. 400, provides a striking illustration of the expensiveness and delay of the proceedings. The facts of the case have been summarized as follows:

The company was comparatively small. The court, dispensing with the services of a

master, heard the evidence itself. The commission, the lower court, and the majority of the Supreme Court, were agreed that the theory of reproduction was to be taken as the determining factor of value, and that 7 per cent was a reasonable rate of return on the value so determined. Within seven months of the beginning of these proceedings before the commission, the company and commission, after a complete investigation by the commission's engineers, had agreed upon a valuation of the entire property involved; for bond issue purposes. This result supported in detail the valuation for rate making purposes later made by the commission and questioned in this suit. All these facts tended to simplify the case. There was no necessity of projecting return or calculating fictitious costs of production. The only point at issue was the value of the property on the reproduction theory. Thus we have here an example of a valuation case reduced to its simplest possible element, the determination of the pure fact of value by agreed methods (pp. 424-425).

\* \* \* \* \*

An examination of the record and opinions discloses that over forty different estimates of the total value of the property were offered in evidence before the commission and the courts. These estimates ranged from \$8,612,399, the actual cost of the property shown by the company's books, to \$25,404,026, the value claimed by Mr. Hagenah, an expert witness for the company (p. 425).

\* \* \* \* \*

The proceedings in this, the simplest of cases as rate fixing cases go, started on June 8, 1923, and three years and five months later

dismissed. . Such a length of time is extraordinary, but few utility valuations, including the length of the commission or court hearings, take less than two or three years. The result is that in a period of depression (even though the utility gives bond to insure refunds to rate-payers) consumers do not receive the benefit of rate-reductions when they are most needed, and in a period of rising prices the utilities cannot receive the needed increase in rates when overheads and other costs are constantly increasing. (Note, *Public Utilities—Rate Base—Late Supreme Court Decisions*, 34 Mich. L. Rev. 100, 107, (1935).)

The tremendous consumption of time and money in the determination of reproduction cost accomplishes nothing. For a "fair value" so arrived at controls only as of the time of its determination. The whole question must be reopened again and fought through to a new determination.

For example, in 1923 the New York Public Service Commission issued an order fixing telephone rates. The litigation which was started by this order was not concluded until 1934. In the course of the litigation 37,000 pages of testimony and 3,000 exhibits were submitted. Three judges, composing a statutory court, spent over six months on a study of the record alone. The results accomplished through the expenditure of this time and effort were thus summarized:

Thus we have the spectacle of a utility whose rates were the subject of controversy continuously for a period of twelve years. As soon, however, as this cycle of rate litigation had been concluded, another was be-

gun. Again New York telephone rates are up before the public service commission. Thus, the continuous wrangle of a dozen years, at times simultaneously before three tribunals, has settled nothing. This is clearly shown by the very basis of the Supreme Court's decision:

“\* \* \* Appellant, having obtained this relief, is not entitled to prosecute an appeal from the decree in its favor, for the purpose of reviewing the portions of the decree fixing the value of appellant's property as of the years 1924, 1926, and 1928, and the rate of return to be allowed. The matters set forth in these portions of the decree are not to be regarded as *res judicata* in relation to subsequent legislative action by the public service commission in fixing rates for the future or in any judicial proceeding relating to such rates.”

Indeed, how could it be otherwise? Even if it was made fairly to public and company, what good is a 1926 or 1928 reproduction cost valuation in 1934 after prices of materials and labor entering into construction have radically altered?

Herein lies the real significance of this case. While it may have lasted considerably longer than the average utility rate proceeding, it is nevertheless typical of the problems and difficulties involved in all rate cases. It illustrates particularly the fact that the *measure* of return to which a utility is entitled is never clear and definite under the prevailing regulatory system. The reciprocal rights of the utilities and the public

remain undefined and variable even after most exhaustive investigation. The more thorough the work, the longer it lasts and therefore the more likely it becomes obsolete before final decision.

This lack of definiteness as to the fundamental factors of rate control is the bane of the existing regulatory process. It is responsible for virtual breakdown of regulation. It creates and perpetuates conflict of interest. It produces trumped-up evidence, protracted hearings, futile appeals, prohibitive expense, and makes systematic regulation as a regular administrative process an impossibility. (Gold, Nathaniel, *An Example of Rate Litigation and Its Significance*, 23 National Municipal Rev. 584, 586-587 (1934).)

Lengthy as valuation proceedings are, they are necessarily expensive. They are expensive to both sides. The utilities are prompted to engage high-priced legal, engineering, and accounting talent, and the commission must follow suit. Furthermore, the utilities pass the expenses incurred by them on to the rate payers. The rate payers thus bear the financial burden of litigating against their own interest.

\* \* \* As the cost to the utility in prosecuting or defending a rate case is allowed as an operating expense, this cost is eventually paid by the consumers. Thus, there is an incentive to the utility to protract the proceedings as long as possible; because, win or lose, the cost must be absorbed in the rates; and the effective date of any reduction in rates is usually postponed. (Atwill, Henry C., *Weaknesses of the Valuation System*, American Academy of Political and

Social Sciences Annals, Vol. 159 (January 1932) p. 96, 98.)

The Federal Trade Commission has likewise called attention to the injustice of the burden placed upon the rate payers:

Now, the significance of rate litigation, a particularly expensive type of legal procedure because of the expert engineering and accounting testimony upon which it depends, is that the cost of maintaining it in behalf of the companies constitutes an allowable expense of operation and must, therefore, be a determinant in the fixing of any rate estimated to allow a fair return to the utility. Thus, the expense is saddled on the rate-paying public. Furthermore, the cost of maintaining commissions and courts before whom rate cases are tried is a direct charge upon the State's tax resources, again a burden on the public. Likewise, special counsel, where used in behalf of the State or commission, and the fees of any independent experts they may feel called upon to employ, to say nothing of the not inconsiderable item, in protracted rate cases, of stenography, printing, and miscellaneous expense are all out of the public pocketbook. What the aggregate of such sums amounts to in any one year has probably never been computed; that it is enormous goes without saying. It is not unsafe to surmise, therefore, that whatever influence lawyers, engineers, and accountants with public-utility connections can bring to bear to preserve a system representing such a source of income of them, will continue to be brought. This is particularly true while, as at present, utility holding companies supply so many of such services and are dependent upon their continuance



on, November 22, 1926, the Supreme Court finally reversed the commission. The investigation to compile the evidence and the hearing of the testimony in the various tribunals consumed over a year's effort by a combined staff of experts employed by the commission and the company. The briefs and record, in greatly abbreviated form, in the Supreme Court alone had reached a total of about 700 pages which fill a bound volume approximately three inches thick, when the court, to avoid further delay, fixed the valuation (pp. 425-426).

\* \* \* \* \*

Now suppose the commission on the day the Supreme Court handed down that decision had fixed rates calculated to yield 7 per cent on \$19,000,000, would the rate stand without a redetermination of the value of the plant? The plain answer on the theory of the case must be, No! The valuation is fixed as of January 1924. The rate necessarily must be fixed as of November 1926. The company if it desired, could question the rates immediately, and the inquiry would have to take place in 1927 (pp. 426-427).

\* \* \* \* \*

The only "fact" of value conclusively established is "spot" value as of 1924; but the spot has moved while the judicial process ground on. The system approved in this case demands a new determination of value, so the commission, courts, and experts must get together once more and construct a new theoretical plant on the "spot" prices of 1927. The very magnitude of the task will again cause the result to be useless. Thus, on the theory of this case, no rate can ever be set which will bind the company (p. 427). (Beutel, *op. cit.* p. 85.)

#### 4. *The fictitious nature of reproduction cost*

The phrase "reproduction cost" covers a concept which has become extremely involved. It would be difficult to conceive of anything farther removed from reality than the idea of reproduction cost as it is at present applied by the courts. A consideration of the manner in which utilities attempt to arrive at the reproduction cost of their plant reveals that there is virtually no relationship between the so-called reproduction cost of existing plant and the price at which a service equally satisfactory could be secured. The completely fictional character of the so-called "value" of property as determined upon the reproduction-cost theory becomes apparent when it is observed that there are possible variations of as much as 100 percent between the estimate of engineers testifying on behalf of a utility and that of a commission's experts. Richberg, Donald R., *A Permanent Basis for Rate Regulation*, 31 Yale L. J. 263, 269 (1922).

Carl I. Wheat describes the unreality of the reproduction-cost theory vividly:

Indeed, when it comes to the actual process of arriving at such a figure for a public utility system, as this "reproduction cost" process has been built up in recent rate cases, those who prefer to keep their feet on sound ground must part company with the so-called "experts." In contrast to the realistic approach to the problem, we discover that under this second approach there has been erected a great structure of imaginary and imaginative potential and hypothetical "costs," totally unrelated to reality. And the argument is made that this is what the Supreme Court really meant by its use of

the term "present cost." Here, indeed, we discover the *ignis fatuus* of "valuation."

It is on this second premise that the "experts" assert the necessity for including the various unreal elements above mentioned, i. e., the nonexistence of the existing plant, the coming to town of a promoter, his speeches to the local clubs offering to build a plant, the excitement and delight of a receptive populace, the preparation of blueprints, the obtaining of new franchises under social, legal, and political conditions not effective when the plant was originally built, the cutting and replacing of pavement not historically cut or replaced, the cost of meeting increased traffic and city growth, and a myriad of like "difficulty factors" that were not present when the plant under consideration was actually constructed, together with divers other hypothetical costs which an actual physical "reproduction" of the property might conceivably entail. Wheat, Carl L., *The Present as Compared With the Original Cost of Construction*, 20 Pub. Util. Fort. pp. 6-8 (1937).

In the article referred to above Wheat cites a striking example of the unreality of the reproduction cost approach:

In the Los Angeles Case the book cost of the company's properties totaled \$169,000,000; the cost to "reproduce" the properties at the time of the inquiry was claimed to be \$182,800,000; and the claim of "fair value" after taking into consideration admitted accrued depreciation, was \$175,000,000. We are here concerned solely with the basis of the company's assertion of what it would cost to "reproduce" the properties.

That figure was based upon an inventory to which certain derived "unit costs" were applied. Cross-examination of the com-

pany's witnesses disclosed that this "appraisal" included \$3,171,400. to represent *the cost of cutting and replacing paving over conduits in instances where no such costs were historically incurred*, though the Supreme Court had but recently declared that "the cost in imaginary conditions of cutting and restoring pavements was not an increment of value." It further appeared that the total included \$1,033,000 to represent *telephone station installations and associated drop wires which had actually been abandoned at the time of the appraisal.*

Moreover, it was brought out that no less than \$1,623,000 was included to represent "*left-in disconnects,*" i. e., telephone disconnected but left by the company, for its own convenience, on the former subscribers' premises. (Picture the imaginary promoter rushing hither and yon over the new system feverishly "reproducing" this large amount of already disconnected and idle equipment!) In addition, the sum of \$405,500 was included to represent *imaginary organization and franchise costs in excess of those actually incurred in the development of the system*, an item that had recently been specifically disapproved by the Supreme Court. (*Op. cit.* at p. 12.)

The Los Angeles Gas Company, furthermore, claimed a sum of \$20,610 representing a glorious flight of fancy—taxes during construction on interest during construction (*op. cit.*, pp. 12-14). The writer describes the method by which the utility sought to ascertain the reproduction value of automobiles:

Curiously enough, the urge for consistency in presenting "reproduction cost" estimates in the Los Angeles Case led the

company's experts into a peculiar *cul-de-sac* when it came to automobiles. Notwithstanding the fact that the southern California used-automobile market is the largest in the United States, and that actual used-car prices are published, are fully standardized, and are readily ascertainable, the company's witnesses decided to "reproduce" its automobiles. To this end they went through the following highly illuminating process:

(1) They obtained from automobiles piece-part catalogues the prices of some thirty separate parts (representing, said they, some 60 per cent of the total vehicle), (a) for the year each make and model of vehicle was purchased, and (b) for December 31, 1934, the date as of which the "valuation" was being made;

(2) They ascertained the ratio which the sum of these piece-part prices for the year of purchase bore to the sum for December 31, 1934;

(3) They applied this ratio to the total cost of vehicles of each particular type and age, as shown on the books, and

(4) They labeled the resulting figure "reproduction cost new" of automobiles.

In such fashion did they obtain the "cost new" of a 1929 Ford in 1934! If such a process bears any relation to "value"—under *any* definition of that term—it is difficult to perceive it. Yet this is but one example of the lengths to which many otherwise sane men have gone when attempting to

build up "reproduction cost" figures in rate cases under the second theory of its nature. (*Op. cit.* at p. 14, footnote 18.)

It goes without saying that if a plant were actually to be reproduced it would be designed in a way to take advantage of possible operating efficiencies. Thus, a plant which would produce at a capacity equivalent to that of existing facilities would normally be of a different design and higher operating efficiency. In the normal course of engineering development economies would be worked out and passed on to the consumer in the form of a reduced rate, resulting from a reduction in the valuation. The purely theoretical character of the concept of reproduction cost takes no account of these operating efficiencies:

\* \* \* In exchange-value economics the real value of a plant is not determined by the cost of reproducing the identical plant but by the cost of producing the commodity in a new plant having the most modern equipment required to produce the article. No one would be willing to invest in an obsolete plant if a new one could be built to be operated at much lower operating expenses per unit of product if such a plant could be built for the same cost as the obsolete one. It is the cost of building a modern plant of similar capacity that determines the value of a plant in an unregulated competitive industry, and not the cost of reproduction of a similar plant. Hence, reproduction cost does not cause the owners of a regulated enterprise to fare the same as the investors in unregulated competitive enterprises.



There is, furthermore, a limitation to the concept that the cost of producing the commodity in a new plant regulates the value of an old plant, since, because of technological developments, the value of such a plant would scarcely, if ever, exceed the cost of reproduction and might be considerably less. Reproduction cost, therefore, is a measure of maximum value at best. Wilson, Herring and Eustler, *op. cit.* p. 81, at p. 126.

That no public utility property ever is or ever has been actually thus physically "reproduced" does not deter these advocates. They merely assert that they have been told to find the cost of *reproducing* the plant under existing conditions, and "here it is." Admittedly, if this second theory of the reason for developing the item of "present cost" in rate cases were ever to be consciously and definitely adopted by the courts, it would be essential thus to estimate a "construction period," to guess at the cost of cutting and replacing new paving, and to imagine the expense that might be incurred in meeting the many traffic and other community factors that have developed since the actual construction, with resultant increased potential costs over and above those which have been met in the historical development of the property under consideration. The adoption by many utilities of this second alleged reason for the development of "reproduction cost" has apparently resulted almost wholly from the hope that by some such reasoning they could thus raise this item farther and farther toward the stratosphere (Wheat, *op. cit.* p. 94, at pp. 6-8).

Similarly Attwill writes:

When we know that values are required by courts to be placed upon the property of a corporation which no one in the world would pay to acquire, except for the monopoly the utility enjoys through special privileges obtained from the public, and values which usually exceed the total of the market value of the outstanding stock plus its liabilities, we know there is something wrong in this system of valuation. Mr. Justice Stone has aptly described it as a "synthetic" value. Synthetic products are seldom as good as the real thing. (*Op. cit.* p. 84, at p. 99.)

Furthermore, the new plant construction might well produce at a lower unit cost by reason of its operating efficiencies. Such a reduction in the operating cost would be passed on to the consumer, if the plant in fact were reproduced.

Even if a new plant of equal capacity were to cost more to construct, it might produce at unit costs so much less than the old plant that the additional cost of construction would be an excellent investment. In such a case it would be unfair to require the consumer to pay rates that would yield enough to pay the high operating expenses of the old plant and produce a return equal to that which would be a fair return upon the greater cost of an up-to-date plant. Yet the courts have held in numerous valuation cases that the plant, the cost of reproduction of which is to be estimated, is a plant identical with that in existence and have declared that the cost of reproduction of the plant must

be considered in valuation for rate-making purposes. (Wilson, Herring and Eustler, *op. cit.* p. 81, at p. 126.)

From the standpoint of the public, there is a serious consequence of the reproduction cost theory. It discourages the introduction of improvements in the technology of the utility. It is in the words of Attwill, "an incentive to inefficiency."

The system makes no provision for depreciation by reason of inadequacy or obsolescence due to the change in the art. Under this rule, what incentive is there for the company, once it has absorbed the lighting and power business in its area, to install up-to-date equipment? If it can obtain as great a return on the old as it can on the new equipment, there is little incentive, so far as the profits of the business are concerned, to install the new. (*Op. cit.* p. 84, at p. 99.)

As stated by another:

It [reproduction cost], encourages the companies in using antiquated machinery and obsolete equipment because of the increase of rates which will result from the practice of including such machinery in the valuation at prices many times greater than its original cost or present value as productive equipment. Thus, in a recent case an obsolete pumping plant that cost less than two hundred thousand and could have been replaced with modern machinery for less than three hundred thousand, was allowed a "reproduction" value of over one million dollars. (Beutel, *op. cit.* p. 85, at p. 433.)

There is a further factor tending to make the reproduction cost entirely unlike the expense that would be incurred if the utility were actually to be reproduced. The determination of reproduc-

tion cost involves the assumption that current prices can be accurately ascertained. As a matter of fact this is very far from true.

\* \* \* As prices go upward or downward, either as to labor or materials, or as the technological processes of construction or manufacture of equipment change, the amount of the reproduction cost is immediately affected. But these are all unweighted factors, which are not accurately recorded, constantly vary, and hence cannot be determined without wide differences of opinion as to their quantitative significance. Consequently, every attempt to readjust the sum is accompanied by extended litigation, cumbersome proceedings, bulky records, and tremendous expense. (Bauer, *op. cit.* p. 71, at p. 415.)

There are indeed several ways in which the ascertainment of current prices may be entirely false. There is not only the possibility of error, which attends the determination of most economic facts. In addition there is a serious danger of a fictitious price level.

The use of "spot prices" on equipment purchased from the Western Electric Company (though the reflection of "precipitate" price changes had been frowned upon in the West Case) also enabled the utility to take advantage of a sudden recent and rather large price increase by that company, and to claim some \$7,000,000 more than would have resulted from the adoption of a 5-year average pricing period (that being the "construction period" actually adopted by the company in its "reproduction cost" estimate). And this in the face of generally declining price levels in respect to almost all other commodities over that period. The

fact is that such Western Electric price increases had practically no direct effect on the capital structure of the plant under consideration, since the construction program of this utility had been negligible in amount since this price increase, and in fact had been negligible in amount for some time prior thereto. Thus, by a mere scratch of the pen, the Western Electric Company (another subsidiary of the defendant utility's parent corporation) had created a basis for claims of increased "reproduction costs" totaling millions of dollars in this single case. (Wheat, *op. cit.* p. 94, at pp. 6-8.)

The general counsel of the Illinois Commerce Commission likewise draws attention to the possibilities of price rigging:

But inasmuch as the utility company is usually a prospective as well as a former customer of the manufacturer in such a case, it is a strain on credulity to assume that the estimated price has much probative force; yet no one is in a better position to make an estimate.

The same difficulty exists, though usually in lesser degree, with quotations of prices even where the items are not obsolete, particularly where an item is a specialty of one manufacturer. An outstanding example is in the case of telephone apparatus of Bell Telephone companies. This is nearly all made by the Western Electric Company, an affiliate; and the price policy of that company has been the reverse of that necessarily followed by competitive companies. When demand falls off, as has happened during the depression, the Western Electric Company raises prices; when demand and production increase, the prices tend to fall. As a repro-

duction cost appraisal involves the pricing of a vastly greater amount of apparatus than is actually being produced for the Company in question, current Western Electric prices have little to do with such a situation. A somewhat similar condition seems to exist in the case of electrical apparatus made by the General Electric and other large manufacturers. Prices of much of such equipment have gone up during the depression, and the Federal Trade Commission has attacked price-fixing in some such instances. (Booth, Harry R., *Prudent Investment, Fair Value and Public Utility Regulation*, 1 National Lawyers Guild Q. 229, 240 (1938).)

There are additional difficulties in the way of the determination of current price levels:

\* \* \* The difficulty of securing adequate current price data at a time when purchases of construction materials are negligible or nonexistent will tend to the use of older data, and thus obscure to a considerable measure the actual reduction in material costs. Reliable labor costs reflecting actual practice are difficult to obtain. (Lilienthal, David E., *Regulation of Public Utilities During the Depression*, 46 Haw. L. Rev. 745, 754 (1933).)

5. "Reproduction cost" ignores the cost of reproducing a service

Theoretically reproduction cost should properly be the cost of reproducing a service, not the cost of building an identical plant.

\* \* \* First, the only possible argument in favor of cost of reproduction springs from the analogous use of cost of reproduction in private competitive busi-



ness. \* \* \* But the cost of reproduction so far as utilized in establishing prices in private business is not the cost of reproducing the identical property but the cost of reproducing an equally serviceable property. Or, let us say, it is the cost of reproducing the article or service, or an equally useful article or service, and never the cost of reproducing a particular plant. In truth, invention and improvement work changes in all industrial operations so rapidly that it is difficult to find any plant a few years old which would be reproduced by competent engineers in the same form to-day. Therefore, to utilize the idea of cost of reproduction intelligently is not to utilize the cost of reproduction of any particular property but of a service or of an equally useful service. (Richberg, Donald R., *A Permanent Basis for Rate Regulation*, 31 Yale L. J. 263, 277 (1922).)

While an accurate application of the theory calls for ascertainment of the cost of reproducing the service, such an ascertainment is in practice impossible:

\* \* \* It must be apparent that such a basis for rate making would open up a new field for speculative estimating, to the increased profit of engineers and lawyers and to the increased confusion of the courts and commissions and would bring increasing instability to all public utility operations. (*Ibid.*)

The impossibility of applying reproduction cost as it should in theory be applied was observed by Robert H. Whitten as early as 1914:

\* \* \* The reproduction of the service involves not only the determination of the

cost of the most efficient substitute plant, but the determination of the present cost of reproducing the business, the proper allowance under present conditions for interest and profit, and the operating costs for the substitute plant. In most cases it is exceedingly difficult and expensive to determine the design of an equally efficient substitute plant. In the case of a railroad, for example, the cost of determining a substitute location and of estimating the operating costs thereon would be so great as to render it entirely impractical as a factor in rate regulation. It would require a careful survey of various available locations, and estimates of construction and operating costs. The engineering costs of such survey and estimates would be enormous.

The cost of reproduction in practice, therefore, instead of meaning the cost of a substitute plant of the most modern approved design, capable of performing the same service as the existing plant, has come to mean the cost of a substantially identical reproduction of the existing plant. This is the usual method. It involves, however, a partial abandonment of the reproduction of the service theory, and a somewhat imperfect recognition of the fact that cost of production is necessarily related to the past as well as to the present and future. (Whitten, Robert H., *Fair Value For Rate Purposes*, 27 Harvard L. Rev. 419, 427, (1914).)

#### 6. *Unearned increment*

When an investor holds property over a period of years, he may become the beneficiary of an unearned increment. It has been contended by some that a reproduction-value rate base enables the investor to realize an appreciation of this kind.

This argument has been advanced by advocates of the use of reproduction cost as the basis for valuations. But, like the "competitive price theory," the claim is specious. The fallacy has been exposed as follows:

The most common argument against the use of the original-cost method of valuing public utility properties, aside from the difficulties alleged to be encountered in securing records of such costs, is that appreciations in value of property (if such exist) are denied to the owners thereof. The reproductionists, however, do not point to any rule of common equity which entitles them first to earn an adequate return on their investments and then to participate in the profits which accrue to appreciation; but they rely on certain judicial passages, which in themselves are sound, although subject to linguistic abuses when applied unadvisedly to valuations that are made bases for rate schedules. (McCann, W. R., American

Society of Civil Engineers, *op. cit.*, p. 1618.)

The attempt to evaluate items of unearned increment enhances the speculative character of determinations of value:

\* \* \* Under the principles of valuation as hitherto established and administered by courts and commissions, "fair value" has become a means of justifying and legalizing almost every type of unearned increment, tangible and intangible, which accrues to unregulated monopoly. By the inclusion of such costless values as going value, water right values, easement values, and by the failure to make anything like

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<sup>1</sup> Italics appearing in original have been omitted.

complete deductions for accrued depreciation and obsolescence, companies are able to establish "values for rate-making purposes" so large that even the most prosperous and profitable enterprises make the false appearance of earning only a very limited rate of return. (Commission on Revision of Public Service Commissions Law, New York, Minority Report (1930), p. 251.)<sup>2</sup>

Furthermore, the increase in value due to unearned appreciation is altogether a creation of the community. It is manifestly unjust to require the rate-paying public to bear an enhanced burden by reason of an increment which it has created. Richberg, Donald R., *A Permanent Basis for Rate Regulation*, 31 Yale L. J. 263 (1922).

This is but one way in which the use of a reproduction cost basis enables a utility to increase the charges to the community by reason of values contributed primarily by the community. Current practice with regard to depreciation reserves provides another device for accomplishing the same result:

\* \* \* It [the reproduction cost method] includes the depreciation reserve as a basis of the return, because as a practical matter it is invested in the plant. This naturally arouses hostility upon the part of the consumer. He is asked to build up an insurance fund to protect the integrity of the stockholders' investment, and then is required to pay a return upon that insurance fund in rates. This necessarily array<sup>3</sup>

<sup>2</sup> The minority members were Frank P. Walsh, James C. Bonbright, and David C. Adie.

the stockholders and the consumers in hostile camps, with the result that the consumer vigorously assails the provisions for depreciation. This causes vigorous assaults to be made upon the allowances for depreciation in rate controversies, with the result that public authorities are likely to allow too little for depreciation. This must be made up by larger expenditures for maintenance, or the capital of the company will eventually become impaired. \* \* \*. Attwill, *op. cit.* p. 84, at. p. 98.)

### 7: *Effect of competing theories on utility financing*

There is a sharp conflict of opinion as to the respective effects of the rival valuation theories upon the market for utility securities. Passing, for the moment, the merits of the controversy, it is evident that the prevailing uncertainty as to the proper method of rate determination must have an adverse effect. This was pointed out by Robert H. Whitten:

Investors in putting their money into public utility enterprises are entitled to know whether, in case the utility is appropriately located and normally successful, it will be permitted to earn a return on the actual and necessary investment, or upon the cost of reproduction, or upon the market or exchange value of the property, or upon a combination of these or other factors. Any arrangement might conceivably be fair to the company and fair to the public provided it were known in advance, so that reciprocal relations between risks involved and returns secured might be established,

and proper methods of accounting for depreciation and appreciation instituted. For the future at least it is clearly essential that some one standard should be adopted as the normal and controlling standard in determining fair value. As to the past, the situation, while more complicated, still points to the desirability of definitely choosing some standard. (Whitten, Robert H., *Op. cit.* p. 105, at p. 420.)

The argument in favor of reproduction cost runs largely in terms of realization of unearned increment and stability of the investor's real income. These questions have been discussed above. For present purposes it will be sufficient to quote the following passage from the Federal Trade Commission's report:

Nevertheless it is said that reproduction cost (which necessarily reflects price changes) is essential to attract capital in a competitive market at minimum rates of interest, since it is necessary to permit utility investors to take advantage of unearned increment in land and other values, in order to induce capital to flow into a regulated enterprise rather than into competitive industries. The argument is that as long as other fields of investment are permitted to hold out the lure of possible unearned increment, utilities must be free to hold out the same lure. Bonbright has pointed out, however, that investors overwhelmingly prefer security of income to opportunity for speculative gains coupled with risk of corresponding loss, as abundantly indicated by the preference of investors for bonds and other fixed interest-bearing securities rather than for common



stocks. It is further indicated by the ability of the United States Government to market its bonds at rates considerably below the prevailing rates of interest without the inducement of any speculative gain. Federal Trade Commission, Summary Report to the Senate of the United States, January 28, 1935, *op. cit.* p. 83, at p. 155.

Similarly,

It is a fair assumption that, in general, investors in establishing public utilities have looked to a fair return on their actual investment to compensate them for their outlay, and have not taken seriously into account any appreciation or depreciation in the value of land or in the price of labor and materials entering into the reproduction cost of structures and equipment. They have necessarily assumed that they would be able and would be permitted to receive for their service an amount equal to their actual cost of production, *i. e.*, operating expenses, depreciation, and interest and profits on their actual capital outlay. (Whitten, *op. cit.*, p. 425.)

To the same effect see Bonbright, James C., *Merits of Original Cost and Reproduction Cost*, 41 Harvard L. Rev. 593 (1928); Hale, *op. cit.* p. 77, at p. 971.

A fluctuating rate of return may, indeed, attract a certain class of capital. But capital so attracted is of dubious usefulness. It represents speculative purchases of equities, a form of "investment" that the utilities and the public might well do without.

The normal actual capital cost as a basis for rate determination, moreover, has a distinct advantage from the standpoint of public policy. It is desirable that rate schedules should have stability and should not fluctuate with the price of iron pipe or copper wire

or with real-estate activity or reactions. A utility is not established for the purpose of speculating in copper wire or iron pipe or land. It must, however, in furnishing its service invest its money permanently in these things. The utility should not be expected to assume the risks of fluctuations in the price of the land and materials it uses (Whitten *op. cit.* p. 105, at p. 426).

Indeed, the speculative character of reproduction value rates is a source of serious dangers to the utilities themselves. Writing in 1921, a commentator called attention to the probable effects of a prolonged decline in prices:

\* \* \* It should be pointed out that we are at present quite obviously entering upon a period of declining prices and that in determining a rate base any use of figures representing the cost to reproduce the identical property will deprive public utilities in the near future of any return upon millions of dollars of actual investments which have been made in the last few years in properties which may be reproduced in the years soon to come for less than the amount of the investments which they represent. In such a time it will seem as unfair to the investor that his investment should be scaled down and that the return on his capital should be diminished because of declining price levels as it has seemed unfair to the consumer that the investor's capital should be inflated and his return increased because of rising price levels. (Richberg, Donald R., *A Permanent Basis for Rate Regulation*, 31 Yale L. J. 263, 277-278 (1921).)

Likewise, Bauer comments:

The second general objection to reproduction cost is its failure to provide for proper

standards of financial stability in the industries affected by regulation. It would promote speculation during one period and produce financial disintegration during another. It would, in turn, attract unnecessary capital and then retard the desirable flow.

The fact is usually overlooked that by far the greater proportion of the actual investment in public utility properties has been made through bond and preferred stock. A reasonable estimate is that at least 75% of the cash capital was furnished by these securities, and only 25% or less by common stock. In many instances the proportion of common-stock investment is even less, and there are important cases where all the money put into the property is represented by limited return securities.

Because of such normal financial structure, with the large percentage of fixed-return capital, any change in the return on the investment has a cumulative effect upon the common stock. (*Op. cit.* p. 71, at p. 419.)

A fluctuating rate of return deprives conservative investors of stability, on the one hand; and it tends to imperil the financial soundness of the utility on the other hand. But the evil potentialities of the variable rate base are by no means exhausted. Much of the financial manipulation which discredits the management of utilities is directly traceable to the use of the reproduction cost base. "Undoubtedly, the stakes are high for those who control utilities through very narrow equities, offering great opportunity for speculative gain." Frankfurter, *Op. Cit.* p. 75, at p. 106.

The doctrine of fanciful valuation has greatly encouraged recent tendencies in financial organization. In turn, the elabo-

rate and mysterious refinements of intercorporate relations have powerfully sustained the efforts by which lawyers and engineers have built up schemes for inflated values. The search for fictitious value—at best a game of blind man's buff—is thus greatly complicated by the intricacies of elaborate corporate arrangements within utility enterprises. Not only is there the excitement of a game fascinating to technicians in law and engineering, but in applying the prevalent judicial doctrines of utility valuation by manipulating intercorporate relations, there are the cruder but more solid temptations of buttressing unreasonable rates by law and securing huge profits through speculative utility holdings. (Frankfurter, *op. cit.* p. 75, at pp. 107-108.)

#### 8. *Practical experience in valuation*

The regulatory commissions have hitherto been subjected to a judicially imposed requirement of considering reproduction cost. But there has in fact been a body of experience developed in the application of valuations determined without reference to reproduction cost. The public utility commissions of Massachusetts and California have, over a period of years, made use of a valuation principle which is independent of the use of reproduction cost:

We are indeed fortunate to have the benefit of the actual experience of at least two states with the historical cost doctrine. Both the Massachusetts and California Commissions have, notwithstanding the absence of judicial support, had the courage to follow this principle through many years of regula-

tion. More than any other state Massachusetts has been able to avoid appeal to the courts, while the California Commission's rate decisions have been sustained with few exceptions in both the state and federal courts. (Rooks, Irvin, & Booth, Harry R., *Rate Regulation of Public Utilities*, 13 Ore. L. Rev. 122, 125 (1934).)

The Massachusetts Public Utility Commission has applied a rate basis resting primarily upon prudent investment, with outstanding success.

Our concern in Massachusetts now is that we may be forced to abandon a system of regulation that, on the whole, has worked well for nearly half a century. Financiers and economists outside of our State have asserted, with some heat and vigor, that our system is unsound economically and cannot work successfully; that it is unjust to the corporation and its stockholders, and that as capital is timid, it will not seek investment in public utilities in Massachusetts. Representatives of some of our own electric companies have sung the same song. The answer to this is that the system has been in operation for nearly fifty years; that in all that time, resort to the Federal courts has been sought by electric companies in Massachusetts but twice, both cases being abandoned; that all of the electric companies in our State are in sound financial condition, and, so far as I am aware, none have difficulty in securing the necessary capital for their development; and that decisions on rate questions are fairly prompt, and hearings and investigations are rarely protracted. We believe that the good faith of Massachusetts can be relied upon by those who invest their capital in public service

enterprises, as it can be relied upon by those who lend the State their money. (*Attwill. Op. Cit.* p. 84, at p. 97.)

But if the prudent investment basis has proved feasible in practice the same cannot be said of reproduction cost. In spite of the inordinate expense and difficulty of determining "fair value" under this method the value so determined is frequently not a practicable measure of the return that a utility can in fact receive. Thus, it is found that utilities do not charge a return based upon reproduction cost:

Chairman Cortelyou of the Consolidated Gas System, Vice President Nickerson in charge of its finances and accounts, and President Sloan of the New York Edison Company and the other electrical properties, all testified that the rates in effect were not yielding the return on the present value of the properties in which they were entitled under Federal Court decisions. In most cases they testified, the rates were not providing a fair rate of return even on actual investment. They said, however, that these rates were good business, i. e., dictated by "good business judgment," that they were in general adequate to enable the companies to obtain all the new capital required to properly service the communities, and they admitted further that the companies were able to pay good dividends on their common stock.

Such testimony exposes the absurdity of the whole valuation claim which has gone so far to wreck public utility regulation. The companies are expending great sums of money and are making extreme efforts to secure rulings from the Courts to the effect



that rates dictated by good business judgment and adequate to secure new capital are confiscatory under the 14th amendment to the federal constitution. Unquestionably such admissions show that the valuations of these properties could safely be reduced not only below the elaborate figures for present value built up by the engineering and accounting forces of the corporation but also below the actual investment figures on the books of the corporations. (*Commission on Revision of Public Service Commissions Law, Minority Report (1930) 271.*)

A serious consequence of prevailing practice in the application of reproduction cost is its effect upon the expert administration of utility law. In practice the decision as to the rate is taken out of the hands of the Commission and rests with the last judge or master who passes on the case:

\* \* \* In practical operation, such a system substitutes the judgment of a master appointed by a court for that of the duly sworn body created by the state for that particular purpose. (*Attwill, Op. Cit. p. 84, at p. 99.*)

Another practical consequence of the use of reproduction cost as a factor in determining the rate basis is sometimes referred to as "social friction." By this is meant the constantly increasing ill-will which is fostered by prolonged and bitter controversies over the determination value.

The customer on the other hand is subject to all sorts of annoyances; the constant changes of rates by injunctions, the retroactive effect of Supreme Court decisions coming years after the litigation starts, uncertain business conditions following the un-

forseeable variations in rates, and the loss of large sums of money due to the impossibility of refunding overcharges on impounded rates subsequently declared illegal.

\* \* \* \* \*

But, though the consumer is heavily burdened, the public at large is the greatest sufferer from the present "process" of valuation. The unnecessary social friction due to the overloading of the legal machinery, the diverting of the attention of courts from other important matters of law to attend to purely speculative questions, of fact, the lost effort of commissions due to constant delays and unnecessary reversals, all these are minor matters compared with the financial cost entailed in the proper conduct of a valuation case. Expert witnesses and capable counsel are expensive luxuries. One eastern public service corporation reports that the engineering cost alone of evaluating a two hundred and thirty million dollar plant was over a million and three quarters dollars. Add to this the fees of expert witnesses and a competent legal staff and it becomes apparent that no private citizen or civic organization can, and no state governmental agency supported by taxes will, attempt to compete with the corporations in gathering and presenting evidence before the master or the court. (Beutel, *op. cit.* p. 85, at pp. 432-433.)

### 9. *Temporary rates*

Assuming that the reproduction cost valuation is to be adhered to, the use of temporary rates will alleviate some of the injurious consequences which have been set forth above.

The protracted delays arising out of the unwieldy rate-making procedure, necessi-

tated by the "fair value" doctrine, have prevented the prompt adjustment of charges to changes in purchasing power. In the period of rapidly rising prices during and immediately following the war, the temporary rate was widely utilized. Discarding the cumbersome valuation procedure in the face of the necessity for prompt action, rate increases were approved upon a showing that existing returns were inadequate to maintain solvency, provide proper service, or yield a "fair return." Conversely, during the period of falling prices after 1921, temporary reductions were upheld unless the utility clearly demonstrated that the temporary rate was confiscatory, the courts taking judicial notice of the drop in the price level. (Note, *Public Utilities—Temporary Rates—Section 114 of New York Public Service Law*, 36 Columbia L. Rev. 1177-1178 (1936).)

Temporary rates are not by any means of exclusive benefit to the rate payers as distinguished from the utilities. On the contrary there has been a substantial demand upon the part of the utilities for the establishment of temporary rates during periods of declining values:

During the early twenties when prices were rising, it appears to have been the common practice for utilities to appear before commissions and obtain increases upon the making of a prima facie case. It was then frequently unnecessary for utilities to offer a complete appraisal and inventory. There are many instances where companies demanding increases appeared before commissions stating that labor, coal, and other material costs were increasing, that they

were not earning an adequate return upon a fair value of the property, and were granted prompt relief. The courts generally sanctioned this practice. If valid reasons existed for giving utilities the advantage of temporary rates during periods of high prices, justice to the consuming public would seem to warrant reproductions by temporary order during periods of low prices. (Rooks & Booth, *op. cit.* p. 114, at pp. 128-129.)

If a temporary rate is to serve any useful purpose it must be arrived at on a basis which is susceptible of prompt determination. A temporary rate which required the determination of reproduction cost would serve no useful purpose. All the time and all the expense necessary to determine the final rate would have to be undertaken before the temporary rate could go into effect.

\* \* \* The power to fix temporary rates in New York, prior to the passage of § 114, was rendered ineffective by the imposition of the requirement that the same methods be used as in the determination of final rates. The instant case, therefore, in permitting the salutary features of the section to take effect, marks a significant advance in rate regulation. The procedure of protecting customers by the unsatisfactory method of utility bonds posted upon the enjoining of a temporary rate is discarded and an approach to the desideratum of an easily determined rate base is made possible. (Note, *Public Utilities—Temporary Rates—Section 114 of New York Public Service Law*, 36 *Columbia L. Rev.* 1177-1178.)

In concluding the discussion of temporary rates it is to be noted that there is no inconsistency between the establishment of a temporary rate based on prudent investment and the establishment of a permanent rate based upon "fair value." See Berkson, *Revitalizing Rate Regulation*, 9 St. John's L. Rev. 332 (1935.)

10. *Miscellaneous judicial and administrative opinion concerning the merits of the reproduction cost versus prudent investment controversy*

In addition to the many authorities cited and quoted in the foregoing portions of this appendix, there are a number of commissions which have taken a very positive stand with respect to the controversy. Likewise, there are a number of judicial opinions which have pointed out the evils of the present system and protested against its continuation. An examination of these authorities will serve to clarify the position of the Government in this brief.

Perhaps the best exposition of the prevailing attitude of those who have been in direct contact with this problem is contained in the Minority Report of the Commission on Revision of Public Service Commissions Law of New York. The report states:

In our opinion the greatest single weakness of the existing system of public utility regulation—and this applies not merely to New York State but to the country as a whole—lies in the hopeless difficulties inher-

ent in the use of a physical valuation of property as the basis of rate control. Unless and until this fatal defect in regulating theory has been overcome, any attempt to revise the Public Service Law must fail to reach the root of the trouble. To a very large degree the other weaknesses which have been disclosed in the New York regulatory system, such as the understaffing of the Commission, the tendency of the Commission to become a purely judicial as distinct from a regulating body, and even the evils resulting from the unrestricted financial operations of holding companies are a repercussion from this more fundamental obstacle to effective control. We believe that we share this view with the great majority of impartial students of the problem and that the existing system would find almost no defenders were it not for the support which it derives from those utility companies which believe that its maintenance is in their pecuniary self-interest. (Commission on Revision of Public Service Commissions Law, New York, Minority Report (1930) p. 334.)

It has been the considered judgment of the great majority of the regulatory commissions that the use of reproduction cost is not a proper factor in the determination of a valuation. Indeed it is apparent that except insofar as the courts have compelled them to do otherwise, the commissions have tended to decline to apply the reproduction cost rule. In order to bring out the extent to which the commissions have adopted this position, we have conducted an extensive examination of the rulings of the commissions. Below are listed a selection of



decisions in which it has been held that reproduction cost should not be a controlling factor:

Danbury v. Danbury & Bethel Gas & Electric Light Co., P. U. R. 1921D, 193, 206.

Re Potomac Edison Co., P. U. R. 1933B, 6.

Grafton County Electric Light & Power Co., P. U. R. 1916E, 879, 885-888.

Northampton Gas Petition, P. U. R. 1915A, 618, 626.

Bay State Rate Case, P. U. R. 1916F, 221, 223.

Middlesex & Boston Rate Case, 2nd Ann. Rep., Massachusetts, Public Service Commission, Vol. I, pp. 105-112 (1914).

Public Service Commission v. Washington Power, Light & Water Co., 7 Ann. Report, Public Service Commission of Washington, 130 (1917).

Re York County Water Co., P. U. R. 1921A, 439.

Iroquois Natural Gas Co., P. U. R. 1919D, 76.

In re Tarkio Electric & Water Co., 12 Mo. P. S. C. R. 260 (1922).

Re Northern States Power Co., 15 P. U. R. (N. S.) 126.

Re Platte County Independent Telephone Co., P. U. R. 1922D, 303.

Re Roanoke Water Works Co., P. U. R. 1920C, 745.

Re Georgia R. & Power Co., P. U. R. 1921A, 165.

Re So. California Telephone Co., P. U. R. 1922C, 97.

Re Exeter Water Works, P. U. R., 1923B, 339.

Re Cole, P. U. R. 1921C, 385.

Marinette v. City Water Co., 9 P. U. R. (N. S.) 308 (1934).

Milwaukee El. R. & Light Co. v. Milwaukee,  
P. U. R. 1918E, 1.

Grand Forks v. Red River Power Co., 8  
P. U. R. (N. S.) 225.

Pacific T. & T. Co. v. Thomas, 13 P. U. R.  
(N. S.) 337.

A number of regulatory commissions have gone further than to condemn the use of reproduction cost as a basis for the valuation of public utilities. They have held that the prudent investment valuation of a utility is the factor that should control in the making of the rate. It must be noted that the commissions to a large extent have been forced to adopt a different theory because of the prevailing view as to the propriety of the use of reproduction cost. It seems highly probable that if reproduction cost were not forced upon the commissions by the courts, there would be wide agreement as to the merits of the prudent investment method. The following are some of the cases in which the commissions have not only rejected reproduction cost as the basis, but have affirmatively adopted the prudent investment theory:

Public Service Commission v. Pacific Telephone & Telegraph Co. P. U. R. 1916D, 947, 955.

Butler v. Lewiston A & W Street Ry. Co.,  
P. U. R. 1916D, 25.

Public Service Commission of Washington  
v. Spokane Falls Gas Light Co., P. U. R.  
1921C, 523.

Carlson v. Jamestown Telephone Co., P. U.  
R. 1920F, 645.

Poughkeepsie & W. Falls R. Co., 1st Ann.  
Rep., New York Public Service Commis-  
sion, Vol. I, p. 255 (1921).

Cavanaugh v. Whitefish Municipal Water Utility, P. U. R. 1922E, 198.

Morris v. N. W. Bell Telephone Co., P. U. R. 1922D, 769.

Re So. Ill. Light & Power Co., P. U. R. 1919D, 489.

Re Pacific Gas & Electric Co., 1 P. U. R. (N. S.) 1.

Re Coast Valleys G. & E. Co., P. U. R. 1924C, 40.

Re San Joaquin Light & Power Corp., P. U. R. 1922D, 595.

Re Fresno Traction Co., P. U. R. 1925C, 566.

Department of Public Service v. Grays Harbor Railway & Light Co., 12 P. U. R. 178, 200.

Re Michigan Bell Telephone Co., 10 P. U. R. (N. S.) 149.

Re Sea Cliff & G. C. Gas Co., P. U. R. 1921A, 211.

Re Boise Artesian Water Co., 11 Ann. Rep. Idaho Public Utilities Commission 155 (1923).

Barth v. Hughes & D. Electric Co., P. U. R. 1922A, 740.

Re Midwest Power Co., P. U. R. 1922E, 22.

The general opinion of regulatory authorities who have passed upon the question of the proper valuation base is overwhelmingly in favor of the prudent investment as opposed to the reproduction cost method. Mr. Justice Brandies in his concurrence in the Southwestern Bell Telephone Company case (262 U. S. 276), pointed out that the Public Utility Reports for the years 1920 to 1923 inclusive, contain 363 cases passing upon the method of determining rate base. In 63 of these cases, repro-

duction cost was severely criticized or expressly repudiated. In 5 cases, reproduction cost was applied. In almost the entire remainder, the reproduction cost was either ignored or given only slight weight.

The objection to reproduction cost has been expressed as follows by a commission:

This method (reproduction at prices prevailing at time of valuation) of determining value \* \* \* is based upon prophecy instead of reality, and depends so much upon half-truths that it bears only a remote resemblance to facts, and rises at best, only to the plane of a dignified guess. (*Danbury v. Danbury & Bethel Gas & Electric Light Co.* (Connecticut Public Utilities Commission) P. U. R. 1921D, 193, 206.)

This Court itself has found it an extremely difficult task to reconcile the reproduction cost method with the world of reality. Even as early as 1912, the Court expressed some doubt as to the exactness of this method. Speaking for the Court, Mr. Justice Holmes said, "Every figure that we have set down with delusive exactness is 'speculative'." *City of Louisville v. Cumberland Telephone and Telegraph Co.*, 225 U. S. 430, 432 (1911).

Concurring in the *Southwestern Telephone Company* case (262 U. S. at 290), Mr. Justice Brandeis said:

\* \* \* The so-called rule of *Smyth v. Ames* is, in my opinion, legally and economically unsound. The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the cap-

ital so invested the federal Constitution guarantees to the utility the opportunity to earn a fair return. \* \* \*

In his concurring opinion in *St. Joseph Stockyards Co. v. U. S.*, 298 U. S. 38, Mr. Justice Brandeis repeated this objection to the *Smyth v. Ames* doctrine. In a separate concurring opinion, Justices Stone and Cardozo said:

We think the opinion by Mr. Justice Brandeis states the law as it ought to be, although we appreciate the weight of precedent that has now accumulated against it.

## APPENDIX B

### *Relation between earnings and stock prices, 1924-1937<sup>1</sup>*

[Index numbers 1926=100]

	Composite	Industrials	Public utilities	Railroads
<b>1924</b>				
1st quarter.....	100.6	108.2	119.5	71.6
2nd quarter.....	84.5	88.6	108.3	65.4
3rd quarter.....	76.0	71.8	87.5	95.3
4th quarter.....	85.9	76.5	107.9	104.1
Average.....	86.9	85.9	105.4	84.9
<b>1925</b>				
1st quarter.....	82.4	82.9	108.9	66.0
2nd quarter.....	99.5	105.1	95.3	85.7
3rd quarter.....	101.8	98.3	81.3	128.8
4th quarter.....	80.6	82.8	99.0	102.5
Average.....	93.3	92.0	95.8	96.0
<b>1926</b>				
1st quarter.....	91.4	95.5	101.6	69.6
2nd quarter.....	107.0	112.5	90.9	94.2
3rd quarter.....	107.4	106.1	8.9	126.9
4th quarter.....	94.8	87.6	110.9	107.1
Average.....	100.0	100.0	100.0	100.0
<b>1927</b>				
1st quarter.....	84.9	85.2	100.1	66.2
2nd quarter.....	87.2	90.5	95.5	70.2
3rd quarter.....	78.6	75.2	81.9	94.0
4th quarter.....	65.5	55.5	97.4	79.8
Average.....	78.7	75.3	95.5	78.0
<b>1928</b>				
1st quarter.....	70.5	68.2	96.5	58.4
2nd quarter.....	75.0	76.4	79.1	67.8
3rd quarter.....	80.3	78.3	73.0	100.4
4th quarter.....	70.0	61.5	83.3	103.9
Average.....	73.9	70.7	82.5	82.2

<sup>1</sup> Sources of Indexes of Earnings and Stock Prices: 6

**Earnings Indexes:**

Standard Trade and Securities, Volume 3, Statistical Section, (Published by Standard Statistics Company)

Supplement of October 15, 1937, page 7.

**Stock Prices Indexes:**

Standard Trade and Securities, Volume 3, Statistical Section, (Published by Standard Statistics Company):

Supplement of May 29, 1936, page B-103.

Supplement of July 17, 1937, page B-160.

Supplement of October 15, 1937, pages 46, 47, and 48.



## Relation between earnings and stock prices, 1924-1937—Continued

[Index numbers 1926=100]

	Composite	Industrials	Public utilities	Railroads
1929				
1st quarter.....	62.6	61.5	72.8	61.3
2nd quarter.....	72.8	72.5	60.1	84.1
3rd quarter.....	63.4	65.2	41.2	97.6
4th quarter.....	65.3	59.0	70.6	93.8
Average.....	66.0	65.5	59.2	84.8
1930				
1st quarter.....	54.5	56.2	62.5	41.6
2d quarter.....	56.9	58.2	53.4	57.8
3d quarter.....	51.9	47.2	55.2	74.7
4th quarter.....	51.2	35.4	87.5	73.3
Average.....	53.4	50.4	63.0	60.7
1931				
1st quarter.....	40.5	33.0	83.7	16.5
2d quarter.....	53.3	48.3	83.5	26.3
3d quarter.....	43.1	35.3	71.1	46.7
4th quarter.....	30.8	3.7	114.1	24.3
Average.....	42.9	37.2	86.1	29.0
1932				
1st quarter.....	33.5	12.5	86.1	4.0
2d quarter.....	35.6	14.0	152.7	.....
3d quarter.....	10.9	.....	103.0	.....
4th quarter.....	9.5	.....	107.5	5.1
Average.....	22.2	.....	120.0	.....
1933				
1st quarter.....	.....	.....	116.1	.....
2d quarter.....	47.5	40.1	107.9	4.6
3d quarter.....	51.0	50.5	97.1	49.0
4th quarter.....	41.9	28.5	149.1	4.9
Average.....	37.6	28.9	115.6	.....
1934				
1st quarter.....	44.0	36.3	132.7	.....
2d quarter.....	59.6	60.1	116.0	.....
3d quarter.....	41.0	40.9	134.6	.....
4th quarter.....	35.9	23.4	173.6	.....
Average.....	45.5	40.5	131.9	.....
1935				
1st quarter.....	59.0	55.1	209.2	.....
2d quarter.....	68.4	68.4	151.9	.....
3d quarter.....	52.9	52.2	112.8	.....
4th quarter.....	75.7	68.1	137.7	78.8
Average.....	65.5	61.3	147.0	.....

*Relation between earnings and stock prices, 1924-1937—Continued*

[Index numbers 1926 = 100]

	Composite	Industrials	Public utilities	Railroads
1936				
1st quarter.....	53.7	52.8	122.8	.....
2d quarter.....	76.8	78.6	121.6	18.8
3d quarter.....	63.6	60.5	105.5	52.2
4th quarter.....	80.5	70.6	158.8	86.8
Average.....	69.1	65.8	127.4	38.6
1937				
1st quarter.....	63.8	60.5	135.7	25.5
2d quarter.....	80.6	81.6	155.9	14.6

## APPENDIX C

### Summary of comparison of reproduction cost estimates in rate cases<sup>1</sup>

[Detail pages 131 to 138]

	No. of cases	Appraisal amounts			Excess of company appraisal
		Company	City or commission	Excess of company appraisal	
					Percent
Year 1928.....	25	\$67,495,001	\$51,965,943	\$15,529,058	29.88
Year 1929.....	32	396,382,303	267,409,792	128,972,511	48.23
Year 1930.....	18	185,542,529	138,940,783	46,601,746	33.54
Year 1931.....	18	321,257,149	210,931,858	110,325,291	52.30
Year 1932.....	10	152,413,117	74,320,022	78,093,095	105.08
Year 1933.....	20	276,949,277	180,569,492	96,379,785	53.38
Total.....	123	1,400,039,376	924,137,800	475,901,586	51.50

<sup>1</sup> The cases shown in this appendix are all the cases reported in Public Utility Reports for the years 1928 to 1933, inclusive, for which comparable information was given.

Reproduction cost estimates in rate cases—1928-1933

YEAR 1928

Name of case	Jurisdiction	P. U. R. reference	Appraisal amounts.			Percent excess of company appraisal
			Company	City or commission	Excess of company appraisal	
1. Re Home Telephone Company	Indiana P. S. C.	1928 A 450	\$1,187,746	\$988,681	\$199,065	18.93
2. Re Georgia Power Company	Georgia P. S. C.	1928 A 834	23,352,960	19,614,216	3,738,644	19.06
3. Knoxville v. South Pittsburg Water Co.	Pennsylvania P. S. C.	1928 B 211	9,112,933	8,211,343	901,590	10.98
4. Re Clarksburg Light & Heat Co.	West Virginia P. S. C.	1928 B 204	4,492,000	2,004,143	2,477,857	123.64
5. Shamokin v. Roaring Creek Water Co.	Pennsylvania P. S. C.	1928 B 393	4,000,000	2,000,000	2,000,000	100.00
6. City of Erie et al. v. Mutual Telephone Company	Pennsylvania P. S. C.	1928 B 537	5,023,494	421,828	771,666	18.15
7. Clearfield v. Clearfield Water Company	Pennsylvania P. S. C.	1928 B 633	803,379	413,344	390,035	94.36
8. Re Pomona Valley Telephone and Telegraph Union.	California R. R. Com.	1928 B 707	729,231	684,330	44,881	6.56
9. Re Northwestern Indiana Telephone Co. et al.	Indiana P. S. C.	1928 B 729	545,572	491,179	54,493	11.09
10. Re Clinton County Telephone Co.	Missouri P. S. C.	1928 B 798	221,017	200,231	20,786	10.38
11. Re Pekin Water Works Co.	Illinois Commerce Com.	1928 C 296	639,146	541,370	97,776	18.06
12. Re Associated Telephone Co.	Indiana P. S. C.	1928 C 295	340,332	273,000	67,332	24.66
13. Borough of Keyport v. County Gas Company	New Jersey Board of Public Utility Comrs.	1928 C 327	1,749,481	1,160,444	589,037	30.76
14. Re Capital City Water Company	Missouri P. S. C.	1928 C 442	899,779	677,314	222,465	30.04
15. Re Guilford Chester Water Co.	Connecticut P. U. C.	1928 C 549	1,548,795	1,168,801	379,994	32.51
16. Re Madison Railways Co.	Wisconsin R. R. Com.	1928 C 844	1,990,216	1,203,000	787,216	62.94
17. University City v. West St. Louis Water & Light Co.	Missouri P. S. C.	1928 D 337	6,261,899	4,460,278	1,801,621	40.38
18. Re Capital City Telephone Co.	Missouri P. S. C.	1928 D 766	291,554	218,395	73,159	33.50
19. Dept. of Public Works v. Morton Electric Co.	Washington Dept. Pub. Wks.	1928 D 813	34,179	29,064	14,115	70.35
20. Re Decatur County Independent Telephone Co.	Indiana P. S. C.	1928 E 5	360,000	325,600	34,400	10.77
21. Re Lexington Water Company	Missouri P. S. C.	1928 E 329	390,117	275,216	114,901	41.75

*Reproduction cost estimates in rate cases—1928-1933—Continued*

Name of case	Jurisdiction	P. U. R. reference	Appraisal amounts			Percent excess of company appraisal
			Company	City or commission	Excess of company appraisal	
22. Re Elwood Water Company.....	Indiana F. S. C.	1928 E 702	\$450,000	\$320,520	\$129,471	97.25
23. Re Logansport Telephone Company.....	Indiana F. S. C.	1928 E 710	932,245	640,044	292,201	45.65
24. Santa Barbara v. Southern Counties Gas Company.....	California R. R. Com.	1928 E 771	1,479,935	1,488,423	8,488	10-57
25. Electric Public Utility Company v. Public Service Commission.....	Maryland Circuit Court	1928 E 856	518,000	315,760	202,250	64.05
Total for 1928.....			67,495,001	51,965,943	15,529,058	29.88

YEAR 1929						
1. Mayor of Hyattsville v. Washington Suburban Gas Co.....	Maryland Public Service Commission.	1929 E 4, 6	\$502,964	\$285,140	\$217,844	30.34
2. Re Public Service Electric and Gas Co.....	New Jersey Board of Public Utilities Commissioners.	1929 E 17	197,673,670	114,408,002	83,265,668	72.78
3. Re Minier Mutual Telephone Company.....	Illinois Commerce Commission.	1929 E 235	135,133	97,785	37,348	38.19
4. Public Utilities Commission v. Camden & Rockland Water Co.....	Maine Public Utilities Commission.	1929 E 325, 330	1,311,667	1,157,924	153,743	13.28
5. Re City of Fresno.....	California Railroad Commission.	1929 E 503, 507	3,030,754	1,662,601	1,368,153	82.29
6. Re Lincoln Telephone & Telegraph Company.....	Nebraska State Railway Commission.	1929 E 512	314,834	268,653	46,181	17.19
7. Re Southern California Telephone Company.....	California Railroad Commission.	1929 E 610, 613	100,000,000	97,100,000	2,900,000	2.93
8. Re Southern Indiana Telephone Company.....	Indiana Public Service Commission.	1929 E 641, 645	64,029	58,573	5,456	9.19
9. R. Illinois Water Service Company.....	Illinois Commerce Commission.	1929 E 650, 652	746,763	569,705	177,058	31.08

10. Plainfield-Union Water Co. v. Board of Public Util. Commissioners of N. J.	United States District Court, D. New Jersey.	1929 D 3, 13, 23.	0, 066, 823	3, 243, 677	2, 823, 146	87.04
11. Re Oconto City Water Supply Company	Wisconsin Railroad Commission	1929 D 65.	301, 062	211, 574	89, 508	42.31
12. Re Lincoln Telephone & Telegraph Company	Nebraska State Railway Commission.	1929 D 116, 119	53, 817	40, 194	13, 623	33.89
13. Re Lambertville Water Co.	N. J. Board of Public Util. Commissioners.	1929 D 138.	203, 084	114, 772	89, 212	77.73
14. Frank v. Johnstown Tel. Co.	Pa. Public Service Comm.	1929 D 161.	2, 403, 115.	1, 719, 507	683, 608	39.76
15. Columbia v. Columbia Water Co.	Pa. Public Service Comm.	1929 D 260.	498, 431	372, 481	125, 950	33.81
16. Greenacres Water Works Co. v. P. S. Comm. of Indiana et al.	U. S. Dist. Ct. S. D. Indiana, Indianapolis Division.	1929 D 287, 263, 294, 295.	523, 500	334, 164	189, 336	56.66
17. James W. Sharp et al. v. Newville Water Co.	Pa. Public Service Comm.	1929 618.	67, 474	40, 238	27, 236	67.69
18. Re City of Los Angeles et al.	Cal. R. R. Comm.	1929 C 380, 396.	827, 818	698, 330	159, 488	23.86
19. City of Erie v. Pa. P. S. Comm.	Pa. Superior Court.	1929 C 598.	5, 023, 494.	4, 251, 828	771, 666	18.15
20. Worcester Electric Lt. Co. v. Henry C. Atwill et al.	U. S. District Court, Massachusetts.	1929 B 1, 34.	16, 242, 027	9, 896, 805	6, 343, 222	64.08
21. P. S. Comm. v. Great Northern Utilities Co.	Montana P. S. Comm.	1929 B 177.	199, 709	36, 267	163, 442	450.66
22. James W. Sharp et al. and Borough of Newville v. Newville Water Co.	Penn. P. S. Comm.	1929 B 320.	67, 474	40, 238	27, 236	67.69
23. Re Madison Telephone Co.	Nebr. State Railway Comm.	1929 B 385.	153, 379	91, 825	11, 554	12.56
24. Re Middle States Telephone Co.	Ill. Comm. Comm.	1929 B 390, 393	582, 196	567, 042	15, 154	2.67
25. Re Dixon Water Co.	Ill. Comm. Comm.	1929 B 403.	491, 885	434, 027	57, 858	13.33
26. Re Vermont Teleph. & Exch. Co.	Ill. Comm. Comm.	1929 B 411.	17, 923	14, 611	3, 312	22.67
27. Pittsburgh v. Peoples Natural Gas Co.	Penn. P. S. Comm.	1929 B 526, 529.	53, 426, 392	24, 374, 307	29, 052, 085	119.19
28. Re Middle States Utilities Co.	Mo. P. S. Comm.	1929 B 534, 556.	72, 011	56, 351	15, 660	27.79
29. Jones v. Wabash Valley Elec. Co.	Indiana P. S. Comm.	1929 B 562.	88, 721	72, 157	16, 564	92.96
30. University City v. West St. Louis Water & Light Co.	Mo. P. S. Comm.	1929 612.	4, 331, 634	4, 278, 427	53, 207	1.24
31. Re Northern Indiana Tel. Co.	Ind. P. S. Comm.	1929 A 74.	564, 340	506, 597	57, 743	11.40
32. Long v. Snow Shoe Water Co.	Penn. P. S. Comm.	1929 A 655.	55, 240	33, 960	21, 250	62.52
Total for year 1929.			396, 382, 303	267, 406, 792	128, 972, 511	48.23

1 Decrease.



*Reproduction cost estimates, in rate cases—1928-1933—Continued*

YEAR 1930

Name of case	Jurisdiction	P. U. R. reference	Appraisal amounts			Percent excess of company appraisal
			Company	City or commission	Excess of company appraisal	
1. Re Salomonis Tel. Co.	Ind. P. S. Comm.	1930 E 39, 40	\$29,352	\$17,999	\$11,453	63.99
2. Re Cambridge Home Tel. Co.	Ohio P. U. Comm.	1930 E 65, 73	630,396	395,576	234,820	59.36
3. Re Ind. Service Corp.	Ind. P. S. Comm.	1930 E 276, 278	6,106,011	5,694,009	442,002	7.80
4. Re Kansas City Public Service Co.	Mo. P. S. Comm.	1930 E 384, 395	40,615,610	33,826,216	6,789,394	20.07
5. Re Iroquois Gas Corp.	N. Y. Dept. of Public Service, State Div., P. S. Comm.	1930 D 31, 32	53,430,014	27,137,698	26,292,316	96.89
6. Me. P. U. Comm. v. Gould Elec. Co.	Me. P. U. Comm.	1930 D 289, 294	546,405	373,030	170,805	45.49
7. Re Home Telephone Co.	Ind. P. S. Comm.	1930 D 481	243,647	157,738	85,909	54.46
8. Re Mich. Federated Utilities, Mt. Clemens Division	Mich. P. U. Comm.	1930 D 506	1,453,068	1,413,733	39,335	2.78
9. Fort Worth Gas Co. v. City of Fort Worth et al.	U. S. Dist. Ct. N. D., Texas, Fort Worth Division.	1930 C 203, 205, 210	6,297,976	3,426,570	2,871,406	83.80
10. Re Pacific Telephone & Telegraph Co.	Cal. R. R. Comm.	1930 C 451, 458	63,066,000	56,893,967	6,222,613	10.94
11. Vincennes Water Supply Co. v. P. S. Comm. of Ind.	U. S. Circuit Court of Appeals, Seventh Circuit.	1930 B 216, 220, 221	1,163,719	778,760	384,950	49.43
12. Re Starke County Tel. Co.	Ind. P. S. Comm.	1930 B 336	58,544	49,351	9,193	18.63
13. Re Northwestern Ind. Tel. Co.	Ind. P. S. Comm.	1930 B 431, 434	199,350	181,477	17,873	9.85
14. Re Ill. Bell Tel. Co., Decatur Exchange	Ill. Comm. Comm.	1930 B 455, 456	2,076,366	1,965,078	211,288	11.33
15. Re Wisconsin Public Util. Co.	Wis. R. R. Comm.	1930 A 119	564,584	500,526	64,058	12.80
16. Re Ill. Bell Tel. Co., Edwardsville Exchange	Ill. Comm. Comm.	1930 A 143, 145	299,492	220,283	49,209	22.34

17. West Palm Beach Water Co. v. City of West Palm Beach.....	U. S. Dist. Ct. Sod. Dist. of Florida.....	1939 A 177, 187.....	5,969,196	3,544,835	2,424,351	66.39
18. Re Citizens Independent Tel. Co.....	Ind. P. S. Comm.....	1930 A 431.....	-2,802,679	2,521,438	280,641	11.13
Total for year 1939.....			185,542,529	138,940,783	46,601,746	33.54

## YEAR 1931

1. Village of Blair v. Northern States Power Company.....	Wisconsin R. R. Commission.....	1931 A 91.....	\$22,357	\$15,482	\$6,875	44.41
2. Re Los Angeles Gas & Electric Corp.....	California R. R. Commission.....	1931 A 147, A 166.....	95,767,351	65,500,000	30,267,351	46.21
3. Re Southern Indiana Gas & Elec Co.....	Indiana P. S. C.....	1931 A 404.....	689,455	598,275	91,180	15.24
4. Re Johnson County Telephone Co.....	Indiana P. S. C.....	1931 A 451.....	401,443	393,881	97,562	32.11
5. Re Bowdoin Utilities Company.....	Montana P. S. C.....	1931 B 35, B 43.....	730,564	622,006	177,958	20.55
6. Re Ohio Bell Telephone Company.....	Ohio P. U. C.....	1931 B 51.....	144,995,146	91,061,900	53,933,246	59.23
7. Re Springfield City Water Company.....	Missouri P. S. C.....	1931 B 82.....	4,066,500	3,203,566	862,934	26.94
8. Re Beckley Water Company.....	West Virginia P. S. C.....	1931 B 279.....	532,404	325,495	205,909	63.07
9. Re United Corporation.....	Indiana P. S. C.....	1931 B 501.....	102,409	74,039	28,350	38.28
10. City of Elko v. Elko Lamelle Power Company.....	Nevada P. S. C.....	1931 C 20.....	428,759	319,909	108,850	34.03
11. Re Mondovi Telephone Company.....	Wisconsin R. R. Commission.....	1931 C 442.....	41,412	56,252	5,160	9.17
12. Re Escanaba Power & Traction Co.....	Michigan P. U. C.....	1931 D 154.....	2,162,364	1,428,223	734,141	51.40
13. Re Utica Gas & Electric Company.....	New York Dept. of P. S. State Div. Public Service Commission.....	1931 D 339.....	20,285,500	9,246,466	11,039,032	119.39
14. Re City of Spooner.....	Wisconsin R. R. Com.....	1931 E 43.....	99,637	54,805	44,832	81.84

*Reproduction cost estimates in rate cases—1928-1933—Continued*

YEAR 1931—Continued

Nature of case	Jurisdiction	P. U. R. reference	Appraisal amounts			Percent excess of company appraisal
			Company	City or commission	Excess of company appraisal	
15. Re Community Telephone Co.	Wisconsin P. S. C.	1931 E 63.	\$64,362	\$86,968	\$7,364	12.92
16. City of Charleston et al. v. Public Service Commission.	W. Va. Supreme Court of Appeals	1931 E 76.	38,243,345	26,569,430	11,673,915	43.94
17. Re Michigan Home Telephone Co.	Michigan P. U. C.	1931 E 446.	1,643,362	1,475,384	167,918	11.38
18. Re Atlanta Gas Company	Georgia P. S. C.	1931 E 464, E 466.	10,940,819	10,018,125	922,694	9.21
Total for 1931			321,237,149	210,931,856	110,325,291	52.30

YEAR 1932

1. City of Vincennes v. Vincennes Water Supply Co.	Indiana P. S. C.	1932 A 21.	\$1,517,810	\$911,588	\$906,222	148.18
2. International Railway Co. v. William A. Frendergast, et al.	U. S. District Court, Western District of N. Y.	1932 A 167.	55,000,000	18,888,884	36,211,116	192.73
3. Re United Fuel Gas Co.	W. Virginia P. S. C.	1932 B 66.	47,186,190	29,659,150	17,527,040	59.09
4. City of Moncton v. Moncton Tramways, Electricity & Gas Company, Ltd.	New Brunswick Board of Comrs. of P. U.	1932 B 374.	385,214	336,020	49,194	14.64
5. Re Alexandria Water Co.	Virginia State Corp. Com.	1932 C 350.	2,026,895	1,145,000	881,895	77.02
6. Scranton-Spring Brook Water Service Company et al. v. Public Service Commission of Pennsylv.	Pennsylvania Superior Court.	1932 C 477.	39,976,795	19,586,596	20,390,199	104.10
7. Re City of Visalia.	California R. R. Commission.	1932 C 520.	248,408	80,329	159,079	178.08
8. Re Ohio Central Telephone Corp.	Ohio P. U. C.	1932 D 441.	1,594,203	953,511	640,692	67.19

9. Central Kentucky Gas Co. v. Railroad Commission of Kentucky et al.	U. S. District Court, Eastern Dist. of Ky.	1932 E 71	2, 028, 069	1, 189, 489	838, 580	79 4)
10. Re Missouri Utilities Company et al.	Missouri P. S. C.	1932 E 462	2, 449, 023	1, 990, 455	489, 168	24 95
Total for 1932.....			152, 413, 117	74, 320, 022	78, 093, 095	105 06

## YEAR 1933

1. Public Util. Comm. et al. v. Newport Water Corp.	R. I. Public Util. Comm.	1933 E 4	\$5, 533, 087	\$2, 241, 720	\$1, 291, 367	57 61
2. Borough of Grove City v. Union Heat & Light Co.	Penn. P. S. Comm.	1933 E 90	823, 344	430, 477	392, 867	91 26
3. City of Maunton v. Maunton Tel. Co.	Wis. P. S. Comm.	1933 E 161	55, 063	48, 842	7, 061	14 46
4. City of Seattle v. Seattle Gas Co.	Wash. Dept. of Public Works	1933 E 253	15, 327, 289	11, 761, 320	3, 565, 969	50 32
5. City of Trenton v. Mo. Public Service Company	Mo. P. S. Comm.	1933 E 270	289, 890	231, 972	56, 918	24 54
6. P. S. Comm. of Mo. v. East Mo. Power Co.	Mo. P. S. Comm.	1933 E 309	707, 566	548, 276	159, 290	29 05
7. City of Wheeling v. Natural Gas Co. of W. Va.	W. Va. P. S. Comm.	1933 D 1, 21	10, 061, 736	6, 095, 387	3, 966, 349	50 28
8. Clark's Ferry Bridge Co. v. P. S. Comm. of Pa.	Pa. Superior Court	1933 D 173, 178	1, 029, 297	741, 871	287, 426	38 74
9. Mont. P. S. Comm. v. Billings Gas Co. (and Galatin Natural Gas Co.).	Mont. P. S. Comm.	1933 D 341	1, 165, 798	719, 331	446, 467	62 07
10. Okla. Corp. Comm. v. Lone Star Gas Co. et al.	Okla. Corp. Comm.	1933 C 1, 17, 22	1, 678, 826	949, 723	729, 103	76 77
11. Re Indiana (Interstate) Public Service Company.	Ind. Public Service Comm.	1933 C 274	299, 661	155, 000	144, 081	70 55
12. Re Broad River Power Co.	S. C. R. R. Comm.	1933 C 351, 359	26, 319, 132	12, 847, 671	13, 471, 461	104 86
13. Re Potomac Edison Cor.	Maryland P. S. Comm.	1933 B 6, 41	14, 801, 560	10, 131, 370	4, 670, 190	46 10
14. Re Yonkers Railroad Co.	N. Y. Dept. of P. S., State Division.	1933 B 61, 65	5, 104, 648	3, 851, 865	1, 252, 783	32 32
15. Elko-Lamoille Power Co. v. P. S. Comm. of Nevada et al.	U. S. Dist. Ct. D. Nevada.	1933 B 191, 193	518, 138	372, 684	145, 254	38 57
16. Wichita Gas Co. v. P. S. Comm. of Kans.	U. S. Dist. Ct. D. Kansas, First Division.	1933 B 225, 242, 243	105, 000, 000	73, 000, 000	32, 000, 000	43 84
17. Re Augusta Lt. & Tel. Co.	Wis. P. S. Comm.	1933 B 478, 481	38, 512	24, 477	14, 035	57 34
18. Fort Fairfield Lt. & Tel. Co. et al. v. Me. Public Service Co.	Me. P. S. Comm.	1933 B 493	1, 882, 508	1, 501, 564	377, 344	25 09
19. Re Patrons of Clinton Electric Lt. & Pr. Co.	Conn. P. U. Comm.	1933 A 467, 472	355, 450	254, 407	101, 343	39 88

*Reproduction cost estimates in rate cases--1928-1933--Continued*

YEAR 1933--Continued

Name of case	Jurisdiction	P. U. R. reference	Appraisal amounts			Percent excess of company appraisal
			Company	City or commission	Excess of company appraisal	
20. Re Northwestern Elec. Co.	Ore. P. U. Comm.	1933 A 493, 499	\$17,452,569	\$12,666,669	\$4,785,900	37.73
Total for year 1933			276,949,277	180,569,492	96,379,785	53.35
Total, years 1928 to 1933, inclusive (123 cases)			1,400,039,376	924,137,960	475,901,416	51.50

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*Tabulation of States having statutes authorizing public service commissions to regulate  
prescribe a uniform system*

Authority to regulate issuance of securities			
States having authority	Statutory reference	States having no authority	States aut
Alabama.....	Secs. 9744-9753, Code of Ala., 1923.	Colorado.	Alabama.
Arizona.....	Sec. 708, Rev. Code of Ariz., 1928.	Delaware. <sup>1</sup>	Arizona..
Arkansas.....	Act 324, Acts of Gen. Assembly of Ark., for 1935, Secs. 58 & 59.	Florida. <sup>2</sup>	Arkansas
California.....	L. 1915, Ch. 91, Sec. 52 (a).	Idaho.	California
Connecticut.....	Ch. 191, Public Acts of 1935.	Iowa. <sup>3</sup>	Colorado.
District of Columbia..	D. C. Code, T. 26, Sec. 99.	Louisiana.	Connectic
Georgia.....	Sec. 2665, 1926 Code.	Minnesota. <sup>3</sup>	District o
Illinois.....	R. S. 1933, Ch. 111a, Sec. 35.	Mississippi. <sup>3</sup>	Georgia..
Indiana.....	Ch. 5, Pub. Serv. Acts, Secs. 54-503, 54-504.	Montana.	Idaho....
Kansas.....	Sec. 66-125, Gen. Sta. of Kans., 1935.	Nevada.	Illinois..
Kentucky.....	Sec. 3959-24, Ky. Stats.	Oklahoma.	Indiana..
Maine.....	Sec. 41, Ch. 62, Rev. Stats.	South Dakota. <sup>3</sup>	Kansas..
Maryland.....	Sec. 392, Art. 23, Ann. Code of P. G. L. of Md.	Texas. <sup>3</sup>	Kentucky
Massachusetts.....	Ch. 222, Mass. Acts of 1935.	Utah.	Maine....
Michigan.....	Sec. 11077, Compiled Laws of 1929.	West Virginia.	Maryland
Missouri.....	Secs. 5196-5198, Rev. St., 1929.	Wyoming.	Massachu
Nebraska.....	Secs. 7 <sup>5</sup> 1201, C. S., 1929.		Michigan
New Hampshire.....	Ch. 24, Sec. 1, P. L. of N. H.		Missouri
New Jersey.....	Sec. 167-24 (e) & (f), Supp.		Montana
New Mexico.....	Secs. 32-705, 22-706, 1929 C. L.		Nebraska
New York.....	Sec. 69, Public Service Law.		Nevada..
North Carolina.....	C. S. 1112 (18); Sec. 18, Ch. 307 P. L. 1923.		New Han
North Dakota.....	Sec. 400c 20; Supp. C. L. of N. D.		New Jer
Ohio.....	Secs. 614-53-54-55, Gen. Code of Ohio.		New Yor
Oregon.....	Ch. 441, Ore. L. 1933.		North Ca
Pennsylvania.....	Art. VI, Secs. 601-604, L. 1937.		North Da
Rhode Island.....	Ch. 2345, P. L. of 1926.		Ohio....
South Carolina.....	1932 Reg. Act, Sec. 1 (f), Sec. 2 (m) & (s).		Oklahom
Tennessee.....	Sec. 5432 (d), Code of Tenn.		Oregon..
Vermont.....	Sec. 5953, P. L. Vt. Also Secs. 5991 & 6106.		Pennsylv
Virginia.....	Ch. 160A, Secs. 4073(1)-4073(16).		Rhode Is
Washington.....	Sec. 2, Ch. 540, L. 1933.		South Ca
Wisconsin.....	Ch. 184, Wisc. Stats.		Tennesse
			Utah....
			Vermont
			Virginia
			Washing
			West Vir
			Wisconsi
			Wyoming

<sup>1</sup> Delaware has no regulatory commission.

<sup>2</sup> Regulatory Commission of this State has no jurisdiction over electric or gas utilities.

<sup>3</sup> Regulatory Commission of this State has no jurisdiction over valuation or rates of electric utilities.





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CHARLES H. HALL

# In the Supreme Court of the United States

No. 509

October Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
DONALD M. LIVINGSTON, RICHARD J. BEAM-  
ISH and JOHN SULLIVAN, Individually and  
Constituting PENNSYLVANIA PUBLIC UTIL-  
ITY COMMISSION; and UTILITY CONSUMERS  
LEAGUE OF YORK, PA.,

*Appellants*

EDISON LIGHT & POWER COMPANY,

*Appellee*

Appeal From the District Court of the United States  
for the Eastern District of Pennsylvania

Motion of Pennsylvania Public Utility Commission  
For Rehearing

CLAUDE T. RENO,  
*Attorney General of Pennsylvania*

SAMUEL GRAFF MILLER,  
*Assistant Counsel*

HARRY M. SHOWALTER,  
*Counsel*

Pennsylvania Public Utility Commission  
North Office Building,  
Harrisburg, Pennsylvania.



## INDEX

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Reasons Supporting Motion for Rehearing .....	3





IN THE SUPREME COURT OF THE UNITED  
STATES

No. 509.

October Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH, et al.

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corpora-  
tion,

*Apellee*

**MOTION FOR REHEARING**

Claude T. Reno, Attorney General for the Common-  
wealth of Pennsylvania, Samuel Graff Miller and  
Harry M. Showalter, Counsel for Pennsylvania Public  
Utility Commission on behalf of Pennsylvania Public  
Utility Commission, move for rehearing in the above  
entitled cause on a date convenient to the Court.

**STATEMENT OF THE MATTERS INVOLVED**

By the opinion of the Court delivered by Mr. Justice Reed on April 17, 1939, the final decree herein appealed from was reversed: **Driscoll et al. v. Edison Light & Power Co.**,—U. S.—, 59 S. Ct. 715. The opinion of the Court contains certain expressions which might be construed as indicating that the Pennsylvania Public Utility Commission had interpreted the Pennsylvania Public Utility Law of May 28, 1937, P. L. 1053, Purdon's Pa. Stat. Ann., 1938 Supp., Title 66, Sec. 1101 et seq., and particularly Sections 309 and 310 of that statute, as **requiring** consideration of elements other than original cost in fixing temporary rates. The Commission never has and does not now interpret the statute as prescribing any formula for the determination of rates, except the minimum limitation that temporary rates prescribed under Section 310 (a) must be sufficient to return not less than 5 per cent on original cost less depreciation.

## REASONS SUPPORTING MOTION FOR REHEARING

The expressions in the opinion of the Court which Pennsylvania Public Utility Commission \* believes subject to misconstruction are as follows:

"The commission drew the order in accord with the prior ruling of the Middle District Court on a former order in this rating proceeding. The former order had also fixed temporary rates but had not set out the findings of value deemed essential by the court. Although the reversal of the commission's order has actually turned on the failure to show the factual basis for the rates, as the district court had stated that compliance with *Smyth v. Ames* was necessary in temporary rate making, the commission based the order now under review on evidence requisite under that rule. **By taking this position, it interprets the statute as requiring consideration of elements other than original cost in fixing temporary rates.** It is not suggested that the commission omitted consideration of any necessary element in the present order. If we assume with the appellee that the constitutionality of a delegation of rate making authority is to be tested by what a rate making body may rightfully do under the delegation rather than what it does, appellee's case is advanced not one whit. **We have here an interpretation of the Pennsylvania statute by the board charged with its enforcement that it must weigh all the essential elements of valuation required by our past decisions.**" (Emphasis supplied)

#### 4 *Reasons Supporting Motion for Rehearing*

The Commission did not interpret the statute as **requiring** consideration of any specific elements in determining reasonable rates. The position of the Commission is set forth at page 10 of its brief in this matter as follows:

### **"SUMMARY OF ARGUMENT**

\* \* \* \* \*

## **II**

**"Section 310 of the Pennsylvania Public Utility Law is constitutional. It provides an adequate method for recoupment of loss; if any, while temporary rates are in effect, and thereby prevents confiscation. Furthermore, the provisions of this section do not restrict the Commission as to the elements of value it may consider, and authorize the prescription of just and reasonable temporary rates consistent with constitutional standards."**  
(Emphasis supplied)

On page 29 of the Commission brief it was stated:

**"Section 310 does not restrict the Commission as to elements of value it may consider in prescribing temporary rates, and authorizes the prescription of just and reasonable rates."**

At page 30 of the Commission brief it was said:

**"It is earnestly submitted that Section 310 (a) does not in any manner whatsoever restrict the**

**Commission as to the elements of value which it may consider in prescribing temporary rates.** The only restriction contained in Section 310 (a) is that temporary rates in all cases must be 'sufficient to provide a return of not less than five per centum upon original cost less accrued depreciation of the physical property of the utility.' The words 'not less' obviously connote a minimum limitation and not an exclusive standard, and the Commission may employ whatever method of arriving at rate base and whatever rate of return is proper under the circumstances so long as the return provided by the temporary rates is not less than 5 per cent of original cost less depreciation.

"The fact that the Commission, in complying with this restriction, is bound to consider the original cost of a utility property, in no way sustains the conclusion that consideration of any other value element is not authorized. If reproduction cost, or any other value element, must be considered, and a rate of return in excess of 5 per cent must be allowed, certainly Section 310 (a) does not preclude the Commission from such consideration or allowance." (Emphasis supplied)

Pennsylvania Public Utility Commission believes that the expressions of your Honorable Court above quoted resulted from a misapprehension of the position of the Commission, particularly since the Court went on to say, with reference to Section 310 (a), **"There is no requirement as to how the rates are to be determined, except that they shall be sufficient to return a**



6     *Reasons Supporting Motion for Rehearing*

given minimum—not less than 5% on the original cost, less depreciation.” (Emphasis supplied) with this interpretation of the Court, the Commission is in complete accord.

Pennsylvania Public Utility Commission desires to emphasize its position that it has always interpreted the Pennsylvania Public Utility Law as **permitting** the consideration of any and all proper elements in the determination of fair and reasonable rates, but has never interpreted the statute as **requiring** the consideration of any specific elements.

Pennsylvania Public Utility Commission respectfully urges that its proper and efficient functioning in the regulation of utility rates would be impaired by a construction of the Pennsylvania Public Utility Law requiring the Commission to consider specific elements of value. It is respectfully submitted that the Commission should be left free, and that the Public Utility Law leaves it free, to follow the progressive trends in rate regulation in accordance with the decisions of the Court.

CLAUDE T. RENO,  
*Attorney General*

Commonwealth of Pennsylvania

SAMUEL GRAFF MILLER,  
*Assistant Counsel*

HARRY M. SHOWALTER,  
*Counsel*

Pennsylvania Public Utility Commission

We hereby certify that the above motion for rehearing is presented in good faith and not for delay.

CLAUDE T. RENO,

*Attorney General*  
Commonwealth of Pennsylvania

SAMUEL GRAFF MILLER,

*Assistant Counsel*

HARRY M. SHOWALTER,

*Counsel*  
Pennsylvania Public Utility Commission

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# SUPREME COURT OF THE UNITED STATES.

No. 509.—OCTOBER TERM, 1938.

Denis J. Driscoll, Thomas C. Buchanan  
and Richard J. Beamish, et al., Ap-  
pellants,

vs.

Edison Light and Power Company.

Appeal from the District  
Court of the United  
States for the Eastern  
District of Pennsylvania.

[April 17, 1939.]

Mr. Justice REED delivered the opinion of the Court.

This is an appeal from the decree of a three-judge district court granting a permanent injunction against the enforcement of temporary rates. Sec. 266, Jud. Code.

The appellants are five named persons, individually and as members of the Pennsylvania Public Utility Commission, and the Utility Consumers League of York, Pennsylvania; intervening defendant below, an unincorporated association of consumers of electric current in the territory served by the appellee. The latter is a public utility corporation organized under the laws of Pennsylvania, which generates, transmits, distributes and sells electric energy to approximately 30,000 customers in and about York, Pennsylvania.

An investigation to determine the reasonableness of appellee's rates was instituted on January 27, 1936. During its progress the state legislature recodified the utility law of Pennsylvania. Act of May 28, 1937, P. L. 1053, Purdon's Pa. Stat. Ann., 1938 Supp., Title 66, Sec. 1101 *et seq.* It enacted a temporary rate section, 310, which is the source of this controversy.

Acting under Sec. 310, the commission, after notice and argument, issued a temporary rate order on July 13, 1937, requiring the utility to file rate schedules which would effect a reduction of approximately \$435,000 in annual gross operating revenues. This order was replaced by another on July 27, 1937, which commanded an identical reduction. This time the commission itself prescribed a schedule of rates. The utility filed a bill in equity in a statutory court in the Middle District of Pennsylvania. On October 15, 1937,

a permanent injunction issued.<sup>1</sup> The Commission did not appeal. On November 30, 1937, another order was issued seeking to establish the same temporary rates and to secure the same reduction in gross revenues as the orders of July 13 and 27.

On December 14, 1937, the utility filed a bill in the United States District Court for the Eastern District of Pennsylvania to enjoin this order. A three-judge court was convened under Sec. 266 of the Judicial Code. By stipulation of the parties the application for an interlocutory injunction brought to hearing on January 17, 1938, was treated as an application for a permanent injunction. On October 14, 1938, a permanent injunction issued.

The court concluded as a matter of law that the utility had no plain, speedy and adequate remedy in the state courts; that the order is void because the "commission acted in direct violation of the mandatory provisions of the Public Utility Act which requires rates for [the company] to be fixed under paragraph (b) of section 310"; that the order is unconstitutional because (1) it violates the procedural requirements of due process, (2) it fails to permit the utility to earn a fair return on the fair value of its property used and useful in the public service, (3) it confiscates the company's property, and (4) it is not supported by substantial evidence.<sup>2</sup>

*Jurisdiction of the Statutory Court.*—Except as modified by the Johnson Act,<sup>3</sup> jurisdiction exists in a statutory court, called pursuant to Sec. 266 of the Judicial Code, to hear and finally determine bills in equity seeking temporary and permanent injunctions against the order of a state administrative commission on the ground of irreparable injury.<sup>4</sup> By this amendatory act, where the order attacked as violative of the Federal Constitution affects the rates of a public utility, does not interfere with interstate commerce and has been made after notice and hearing, the jurisdiction of the district court to enjoin its enforcement is withdrawn, unless no "plain, speedy and efficient remedy may be had, at law or in equity, in the courts of such State." No challenge to the jurisdiction was made in the statutory court or on appeal. In response to

<sup>1</sup> Edison Light & Power Co. v. Driscoll, 21 F. Supp. 1.

<sup>2</sup> Edison Light & Power Co. v. Driscoll, 25 F. Supp. 192.

<sup>3</sup> Judicial Code, § 24(1), as amended by Act of May 14, 1934, c. 283, 48 Stat. 775.

<sup>4</sup> Okla. Gas Co. v. Russell, 261 U. S. 290, 292; Herkness v. Irion, 278 U. S. 92, 93.



questions from the bench, counsel for the commission conceded that there was no remedy in the state courts which would satisfy the Johnson Act.

The reason for this concession lies, so far as a remedy in equity is concerned, in the provision of the Pennsylvania statute forbidding an injunction against an order, "except in a proceeding questioning the jurisdiction of the commission."<sup>5</sup> The bill in certain allegations attacks the section of the Public Utility Law under which this order issued as violative of the Fourteenth Amendment in that it empowered the commission to fix non-compensatory and discriminatory temporary rates, in an arbitrary manner. In one sense this questions the jurisdiction of the commission. If Sec. 310 is invalid, there is no other provision to authorize temporary rates. Jurisdiction is a word of uncertain meaning. As used in Sec. 1111, *supra*, it apparently refers to proceedings by the commission under the terms of the statute. In this use it would permit an injunction, equitable grounds being shown, where the public utility is not covered by the act. Otherwise, action in excess of the powers of the commission, such as a confiscatory rate, might be deemed beyond its jurisdiction. At any rate, without an authoritative determination by the state courts, we cannot say, for this character of proceeding, that the remedy in the state courts is plain, speedy and efficient.<sup>6</sup> The remedy at law by appeal is ineffective to protect the utility's position *pendente lite*. The supersedeas does not postpone the application of the temporary rates.<sup>7</sup> The statutory court had jurisdiction of the bill.

*Statutory Basis for the Order.*—Sec. 310<sup>8</sup> contains several subsections. The commission fixed the temporary rates under subsection (a). The district court concluded as a matter of law that this

<sup>5</sup> Sec. 1111, P. L. 1053, Purdon's Pa. Stat. Ann., 1938 Supp., Title 66, sec. 1441: "Exclusive jurisdiction of Dauphin County Court to hear injunctions.—No injunction shall issue modifying, suspending, staying, or annulling any order of the commission, or of a commissioner, except in a proceeding questioning the jurisdiction of the commission, and then only after cause shown upon a hearing. The court of common pleas of Dauphin County is hereby clothed with exclusive jurisdiction throughout the Commonwealth, of all proceedings for such injunctions, subject to an appeal to the Superior Court as aforesaid."

<sup>6</sup> *Mountain States Co. v. Comm'n*, 299 U. S. 167, 170; *Corporation Comm'n v. Cary*, 296 U. S. 452.

<sup>7</sup> Sec. 1103, P. L. 1053, Purdon's Pa. Stat. Ann., 1938 Supp., Title 66, Sec. 1433.

<sup>8</sup> P. L. 1053, Purdon's Pa. Stat. Ann., 1938 Supp., Title 66, Sec. 1150.

action was invalid because they could only be fixed under subsection (b). The two subsections are set out below.<sup>9</sup> In its opinion, without discussing Sec. 310(b), the court declared Sec. 310(a) unconstitutional because it permitted the commission to fix a temporary rate based upon the single factor of original cost less depreciation.<sup>10</sup> The commission, however, did not confine itself to that one element in setting the fair value of the appellee's property, for the purpose of temporary rates, at \$5,250,000. It gave weight to reproduction cost, original cost, going concern value and the necessity for working capital, and it allowed on this rate base a return of more than six per cent. This, of course, satisfies the requirement of Sec. 310(a) that the temporary rates shall produce not less than 5% on the "original cost, less accrued depreciation."

Appellee's first contention is that the decree may be sustained for the sole reason that the commission should have proceeded under subsection (b) because the appellee does not have continuing prop-

<sup>9</sup> "Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use), of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

"(b) If any public utility does not have continuing property records, kept in the manner prescribed by the commission, under the provisions of section five hundred two of this act, then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first, one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five, or such other subsequent year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions: Provided, That the commission, in determining the basis for temporary rates, may make such adjustments in the annual report data as may, in the judgment of the commission, be necessary and proper."

<sup>10</sup> *Edison Light & Power Co. v. Driscoll*, 25 F. Supp. 192.

erty records. As the conclusion of the lower court on this point is not supported by a state decision, we analyze for ourselves the provisions of the sections. It is clear from the language of Sec. 310(a) that it is applicable not only to public utilities whose reports to the commission show the original cost of their physical property but also to those whose original cost is not so shown. The last clause of the section authorizes the commission to estimate such cost. There is no provision in 310(a) which limits its application to those utilities which maintain the continuing property records of Sec. 502.<sup>11</sup> Section 310(b), see note 9, furnishes a partial alternative for Sec. 310(a). Where there are no continuing property records, as provided by Sec. 502, the commission must in fixing the temporary rate arrange for at least a five per cent return on original cost under (a) or the return of an operating income under (b) equal to that for the year 1935 or a subsequent year, as determined by the commission.

Appellee urges next that the section permits the commission to disregard present cost, depreciate original cost, omit indirect and overhead items of construction, and exclude allowances for working capital or going concern value. Although these items were considered by the commission, the appellee contends that the order is invalid because Sec. 310(a) might have been complied with by providing a return of 5% on the original cost depreciated. The argument seems to be that a statute which permits an unconstitutional determination is invalid, even though it is actually applied in a constitutional manner.<sup>12</sup>

The commission drew the order in accord with the prior ruling of the Middle District Court on a former order in this rate proceed-

<sup>11</sup> P. L. 1053, Pardon's Pa. Stat. Ann., 1938 Supp., Title 66, Sec. 1212.

<sup>12</sup> Continuing property records.—The commission may require any public utility to establish, provide, and maintain as a part of its system of accounts, containing property records, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of such property units by definite reference to the specific land parcels upon which such units are located or stored; and the commission may require any public utility to keep accounts and records in such manner as to show, currently, the original cost of such property when first devoted to the public service, and the reserve accumulated to provide for the depreciation thereof."

<sup>12</sup> Cf. *Panama Refining Co. v. Ryan*, 293 U. S. 388, 420; *Wuchter v. Pizzutti*, 276 U. S. 13, 24; *People v. Klinek Packing Co.*, 214 N. Y. 121, 138; *Montana Company v. St. Louis Mining Co.*, 152 U. S. 160, 170. But see *Hatch v. Beardon*, 204 U. S. 152, 160; *Tyler v. Judges*, 179 U. S. 405, 410; *Jacobson v. Massachusetts*, 197 U. S. 11, 37; *Lieberman v. Van De Carr*, 199 U. S. 552, 562; *Home Telephone Co. v. Los Angeles*, 211 U. S. 265, 278.

ing.<sup>13</sup> The former order had also fixed temporary rates, but had not set out the findings of value deemed essential by the court. Although the reversal of the commission's order had actually turned on the failure to show the factual basis for the rates, as the district court had stated that compliance with *Smyth v. Ames*<sup>14</sup> was necessary in temporary rate making, the commission based the order now under review on evidence requisite under that rule. By taking this position, it interprets the statute as requiring consideration of elements other than original cost in fixing temporary rates. It is not suggested that the commission omitted consideration of any necessary element in the present order. If we assume with the appellee that the constitutionality of a delegation of rate making authority is to be tested by what a rate making body may rightfully do under the delegation rather than what it does, appellee's case is advanced not one whit. We have here an interpretation of the Pennsylvania statute by the board charged with its enforcement that it must weigh all the essential elements of valuation required by our past decisions.

There is nothing in the language of Sec. 310(a) which requires a different construction. The commission is authorized to fix temporary rates. There is no requirement as to how the rates are to be determined, except that they shall be sufficient to return a given minimum—not less than 5% on the original cost, less depreciation. The language authorizing the fixing of temporary rates is cast, except as to the limitation just referred to, in much the same pattern as the language of Sec. 309 authorizing the determination of permanent rates. The latter section reads: “. . . the commission shall determine the just and reasonable rates . . .” A different construction would raise the novel and important question of the constitutionality of a temporary rate, based solely on depreciated original cost, with provision for recoupment of the loss from insufficient temporary rates.<sup>15</sup> In the absence of an authoritative state decision, we are reluctant to accept a construction which brings forward that issue, particularly when the case may reasonably be determined upon the interpretation of the officials of the

<sup>13</sup> *Edison Light & Power Co. v. Driscoll*, 21 F. Supp. 1.

<sup>14</sup> 169 U. S. 466.

<sup>15</sup> “(e) Temporary rates, so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the

state charged with the administration of the act.<sup>16</sup> This course observes the very salutary rule that "this Court will not decide an issue of constitutionality if the case may justly and reasonably be decided under a construction of the statute under which the act is clearly constitutional."<sup>17</sup>

*Confiscation.*—There remains for examination the appellee's argument that the decree of the district court enjoining the enforcement of the order should be sustained because it is confiscatory. The commission, as of November 30, 1937, found the rate base, revenue, expenses and rate, as set out below.<sup>18</sup> Appellee urges here that the commission's figures are erroneous in the following particulars: (1) The rate base should be \$5,866,091; (2) the rate should be 7½ per cent; (3) two items of expense, disallowed by the commission should be added to the operating expenses, (a) some increase in annual salaries and (b) rate case expenses on books to November 15, 1937; (4) allowance should be made for a prospective loss of annual profit by reason of the loss of a large customer, through abandonment of railway service by York Railways Company.

(1) The commission estimated the original cost as of December 31, 1936, at \$4,576,169.73. The company estimated the original

commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect." Cf. *Prendergast v. New York Telephone Co.*, 262 U. S. 43; *Bronx Gas and Electric Company v. Maltbie*, 271 N. Y. 364.

<sup>16</sup> *Fox v. Standard Oil of New Jersey*, 294 U. S. 87, 97; *Union Ins. Co. v. Hoge*, 21 How. 35, 66.

<sup>17</sup> *Thompson v. Consolidated Gas Co.*, 300 U. S. 55, 75-76, and cases cited; *f. Blodgett v. Holden*, 275 U. S. 142, 148; *Federal Trade Comm'n v. American Tobacco Co.*, 264 U. S. 298, 307; *Texas v. Eastern Tex. R. R. Co.*, 258 U. S. 204, 217.

Rate Base or Fair Value of Property	\$5,250,000.00
Rate of return 6%	
Required return	315,000.00
Revenue after Reduction	\$1,767,329.00
Operating Expenses	\$1,033,898.00
Taxes	206,400.00
Annual Depreciation	142,531.00
Estimated Return	384,500.00



cost as of November 30, 1936, exclusive of financing charges, at \$4,619,364.00 and its book cost as of December 31, 1936, at \$4,578,793.00. If, to the highest of these items, we add \$164,000 for working capital and \$142,851.07, representing net additions to September 30, 1937, the amounts claimed by the company, the original cost rate base is found to be not more than \$4,926,215.07.

The commission excluded the cost of financing because there was no evidence of any actual expenditures for such purpose or of any studies of such cost. We find no error in this.<sup>19</sup> There was here no foundation for an estimate.<sup>20</sup> Appellee's suggestion that evidence supporting its claim is found in the capitalization chart of York Railways Company, the owner of appellee's common stock, is not accepted. This shows the discount, \$298,825.00, paid by the parent company on \$2,706,000 face amount of bonds of various issues between 1909 and 1925. It appears that \$1,027,904 of the proceeds was expended for construction work of the York Edison Company, apparently appellee's predecessor. Nothing is shown as to the cost of this money to the appellee. It may have given notes for or been charged with this exact amount, without a finance charge. The financing cost to appellee may have been covered by the interest rate.

The commission made no specific allowance for going concern value. It did, however, state that it had weighed the going concern value with other factors to determine fair value. It gave practical effect to this consideration when it fixed fair value several hundred thousand dollars in excess of its average of original and reproduction cost, both depreciated. In the computations by the company of original and reproduction costs, allowances were made for the overhead expense of creating the aggregate of land, buildings, and equipment, making up the utility. No tangible evidence of any unusual situation justifying any definite further allowance appears in the testimony of appellee's witness Seelye. The plant of the utility without the utilization of its production by the community would be of little value. Expenditures to secure customers through advertisement and solicitation, as well as to install connections do not appear separate from the ordinary operating and construction

<sup>19</sup> *Wabash Valley Elec. Co. v. Young*, 287 U. S. 488, 500; *Galveston Elec. Co. v. Galveston*, 258 U. S. 388, 397.

<sup>20</sup> Cf. *Dayton P. & L. Co. v. Comm'n.* 292 U. S. 290, 309-10; *Los Angeles Gas Co. v. R. R. Comm'n.*, 289 U. S. 287, 310.



costs. The appellee points to the character of the territory served, the company's ability to earn, the efficiency of the management, the adequate available power supply and the excellent capital structure as indicative of a going concern value above tangible property plus overhead. To appraise these elements apart from and in addition to reasonable cost figures would require evidence of a failure on the part of the commission to give reasonable weight to these factors. This evidence is lacking here.<sup>21</sup>

For depreciated reproduction cost as of November 30, 1936, the commission accepted the estimate of the company for direct costs, \$3,981,347. It added 19%, \$756,456, for indirect costs and reached a total of \$4,737,803. This finding reduced the indirect costs from the 24.3 per cent claimed by the company. Evidence was introduced before the commission supporting each percentage estimate. The amount of these indirect costs likely to be incurred is too uncertain for us to conclude that the percentage adopted is erroneous.<sup>22</sup> We cannot see that the failure of the commission's witness Bierman to inspect the property made less valuable his estimate on the proper percentage to be applied for indirect costs. These indirect costs are of the character of interest, supervision, cost of financing, taxes and legal expense.

The utility states that the commission, in fixing the reproduction cost, erred by refusing to consider the effect of a claimed increase of prices. The commission, on November 30, 1937, fixed reproduction cost upon a computation based by the utility upon prices as of November 30, 1936. This showed a gross cost of \$5,572,134, depreciated and reduced by the commission, as explained in the preceding paragraph, to \$4,737,803. The utility presented a further computation, showing as of May 31, 1937, that increased prices, due to a rising level, would increase the gross cost to \$6,019,832. The argument is that the later estimate should have been considered.<sup>23</sup> Proportionally reduced to accord with the action of the commission, this latter figure would become \$5,118,465. If to this higher repro-

<sup>21</sup> *Denver Stock Yard Co. v. United States*, 304 U. S. 470, 475; *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 62. Cf. *Dayton P. & L. Co. v. Comm'n*, 292 U. S. 290, 308; *St. Joseph Stock Yards Co. v. United States*, 11 F. Supp. 322, 334; *Des Moines Gas Co. v. City of Des Moines*, 238 U. S. 153; *McCardle v. Indianapolis Co.*, 272 U. S. 400, 413.

<sup>22</sup> *Dayton P. & L. v. Comm'n*, 292 U. S. 290, 311.

<sup>23</sup> *McCart v. Indianapolis Water Co.*, 302 U. S. 419.

duction cost we add working capital, there appears a reproduction cost depreciated figure of \$5,282,465.

It is furthermore to be observed that the commission's figures do not differ far as to fair value, from the estimate of an important witness for the utility, Mr. Seelye, who testified on March 12, 1937, that the fair value was not less than \$5,500,000 and said later in answer to the commissioner's question that the fair value, in his opinion was \$5,500,000. This estimate was reiterated on December 20, 1937, in the affidavits of Mr. Seelye and Mr. Wayne, the President of the company, in support of the motion for temporary injunction.

For the purpose of passing upon the issue of confiscation in the temporary rates, we shall accept \$5,500,000 as the fair value of the property as of November 30, 1937.

(2) The rate of return was fixed by the commission at six per cent. Witnesses for the utility brought out facts deemed applicable in the determination of a proper rate of return on the fair value of the property. Their evidence took cognizance of the yield of bonds, preferred and common stocks of selected comparable utilities, the stagnant market for new issues, prevailing cost of money, the implications of the possible substitution of some governmentally operated or financed utilities for those privately owned and the dangers of a fixed schedule of rates in the face of possible inflation. From these factors they deduced that a proper rate of return would be from 7.8 per cent to 8 per cent. An accounting expert of the commission countered with tables showing yields of bonds of utilities; the yield to maturity of Pennsylvania public utility securities, approved by the commission between July 1, 1933, and May 7, 1937, long term and actually sold for cash to non-affiliated interests; yield of Pennsylvania electric utilities; financial and operating statistics of Pennsylvania electric utilities; money rates, and other material information. He concluded 5.5 per cent was a reasonable rate of return.

It must be recognized that each utility presents an individual problem.<sup>24</sup> The answer does not lie alone in average yields of seemingly comparable securities or even in deductions drawn from recent sales of issues authorized by this same commission. Yields of

<sup>24</sup> *United Railways v. West*, 280 U. S. 234, 249; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 48; *Bluefield Co. v. Public Service Comm'n*, 262 U. S. 679, 692; *Knoxville v. Water Co.*, 212 U. S. 1, 17.

preferred and common stocks are to be considered, as well as those of the funded debt. When bonds and preferred stocks of well seasoned companies can be floated at low rates, the allowance of an over all rate return of a modest percentage, will bring handsome yields to the common stock. Certainly the yields of the equity issues must be larger than that for the underlying securities. In this instance, the utility operates in a stable community, accustomed to the use of electricity and close to the capital markets, with funds readily available for secure investment. Long operation and adequate records make forecasts of net operating revenues fairly certain. Under such circumstances a six per cent return after all allowable charges cannot be confiscatory.

(3) and (4). The utility urges that two items of expense and a prospective loss should be added to the operating expenses, allowed by the commission, of \$1,382,829. The most important of these items is the rate case expenses. The company by its Exhibit 21 shows these incurred to November 15, 1937, to be \$178,374.50. The commission from Exhibit 23 found them to be \$127,935 for the twelve months ending September 30, 1937. The difference probably comes from the expenses before and after the period considered by the commission. We assume the higher figures to be correct. As the commission concluded that the prior rates of the company were obviously excessive, it allowed nothing for expense in defending them. Consequently there is no discussion of the reasonableness of the amount of the company's charge and we accept them as reasonable. Even where the rates in effect are excessive, on a proceeding by a commission to determine reasonableness, we are of the view that the utility should be allowed its fair and proper expenses for presenting its side to the commission. We do not refer to expense of litigation in the courts. "A different case would be here if the company's complaint had been unfounded or if the cost of the proceeding had been swollen by untenable objections."<sup>25</sup>

In the allowance of these expenses, the period over which they are to be amortized will depend upon the character of services received or disbursements made. There could rarely be an anticipation of annually recurring charges for rate regulation. Under

<sup>25</sup> West Ohio Gas Co. v. Comm'n (No. 1), 294 U. S. 63, 74; see Wabash Valley Elec. Co. v. Young, 287 U. S. 488, 500.

the circumstances here presented where full statistics on investment, inventory and labor requirements have been made which, as cumulated, will form largely the basis of all future negotiations, we are of the opinion that amortization over a ten year period is reasonable.<sup>26</sup> As such an adjustment produces an estimated return very close to the reasonable rate, even with the addition to the operating expenses of the other items of increased salaries, \$20,593, and prospective loss of annual profit, \$15,089, we do not enter into a discussion of them. Experience will add its weight to the other evidence on further hearing. The note below shows the calculation.<sup>27</sup>

At best, these estimates are prophecies of expected returns. The incalculable factors of business activity, unanticipated demand or forbearance, substitution and other variables lead us to approximations. We are satisfied the reduction required is not shown to be confiscatory.

*Reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

<sup>26</sup> *Wabash Valley Elec. Co. v. Young*, 237 U. S. 483, 500; *West Ohio Gas Co. v. Comm'n* (No. 1), 294 U. S. 64, 74.

<sup>27</sup> Compare with the computation of the Commission, note 18.

Rate Base or Fair Value of Property .....		\$5,500,000.00	
Rate of return 6% .....			
Required return .....			330,000.00
Revenue after Reduction .....		\$1,767,329.00	
Operating Expenses .....	\$1,033,898.00		
Taxes .....	206,400.00		
Annual Depreciation .....	142,531.00		
Rate Expense, 10-year .....			
Amortization .....	17,838.00		
Salary Increase .....	20,593.00		
Prospective Loss .....	15,089.00	1,436,349.00	
Estimated Return .....			330,980.00

# SUPREME COURT OF THE UNITED STATES.

No. 509.—OCTOBER TERM, 1938.

Denis J. Driscoll, Thomas C. Buchanan  
and Richard J. Beamish, et al., Ap-  
pellants,  
vs.  
Edison Light and Power Company.

Appeal from the District  
Court of the United  
States for the Eastern  
District of Pennsylvania.

[April 17, 1939.]

Mr. Justice FRANKFURTER, concurring.

The decree below was clearly wrong. But in reversing it, the Court's opinion appears to give new vitality needlessly to the mischievous formula for fixing utility rates in *Smyth v. Ames*, 169 U. S. 466. The force of reason, confirmed by events, has gradually been rendering that formula moribund by revealing it to be useless as a guide for adjudication. Experience has made it overwhelmingly clear that *Smyth v. Ames* and the uses to which it has been put represented an attempt to erect temporary facts into legal absolutes. The determination of utility rates—what may fairly be exacted from the public and what is adequate to enlist enterprise—does not present questions of an essentially legal nature in the sense that legal education and lawyers' learning afford peculiar competence for their adjustment. These are matters for the application of whatever knowledge economics and finance may bring to the practicalities of business enterprise. The only relevant function of law in dealing with this intersection of government and enterprise is to secure observance of those procedural safeguards in the exercise of legislative powers which are the historic foundations of due process.

Mr. Justice Bradley nearly fifty years ago made it clear that the real issue is whether courts or commissions and legislatures are the ultimate arbiters of utility rates, (dissenting in *Chicago, Milwaukee & St. Paul Ry. v. Minnesota*, 134 U. S. 418, 461). Whatever may be thought of the wisdom of a broader judicial rôle in the controversies between public utilities and the public, there can be no doubt that the tendency, for a time at least, to draw

fixed rules of law out of *Smyth v. Ames* has met the rebuff of facts. At least one important state has for decades gone on its way unmindful of *Smyth v. Ames*, and other states have by various proposals sought to escape the fog into which speculations based on *Smyth v. Ames* have enveloped the practical task of administering systems of utility regulation.

*Smyth v. Ames* should certainly not be invoked when it is not necessary to do so. The statute under which the present case arose represents an effort to escape *Smyth v. Ames* at least as to temporary rates. It is the result of a conscientious and informed endeavor to meet difficulties engendered by legal doctrines which have been widely rejected by the great weight of economic opinion,<sup>1</sup> by authoritative legislative investigations,<sup>2</sup> by utility commissions throughout the country,<sup>3</sup> and by impressive judicial dissents.<sup>4</sup> As a result of this long process of experience and reflection, the two states in which utilities play the biggest financial part—New York and Pennsylvania—have evolved the so-called recoupment scheme for temporary rate-fixing (thereby avoiding some of the most wasteful aspects of rate litigation) as a fair means of accommodating public and private interests. It is a carefully guarded device for securing “a judgment from experience as against a judgment from speculation,” *Tanner v. Little*, 240 U. S. 369, 386, in dealing with a problem of such elusive economic complexity as the determination of what return will be sufficient to attract capital in the special setting of a particular industry and at the same time be fair to the public dependent on such enterprise.

That this Court should not “decide an issue of constitutionality if the case may justly and reasonably be decided under a construction of the statute under which the act is clearly constitutional” is, as an abstract proposition, basic to our judicial obligation. But this is not a formal doctrine of self-restraint. Its rationale is

<sup>1</sup> See *BONBRIGHT, THE VALUATION OF PROPERTY*, 1081-1086, 1094-1102; *3A SHARFMAN, THE INTERSTATE COMMERCE COMMISSION*, 121-137.

<sup>2</sup> N. Y. State Commission on Revision of the Public Service Commission Law, *Report of Commissioners, passim* (1930).

<sup>3</sup> Proceedings of the Forty-Seventh Annual Convention of the National Association of Railroad and Utilities Commissioners, 232 *et seq.*; Proceedings of the Forty-Eighth Annual Convention of the National Association of Railroad and Utilities Commissioners, 115 *et seq.*, 289 *et seq.*; Proceedings of the Forty-Ninth Annual Convention of the National Association of Railroad and Utilities Commissioners, 159 *et seq.*


<sup>4</sup> See, e.g., Brandeis, J., concurring, in *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Comm'n*, 262 U. S. 276, 289, and bibliography therein contained.



avoidance of conflict with the legislature. The opinion from which the preceding quotation is taken and the decisions to which it refers are all cases in which constitutionality was in obvious jeopardy. It is one thing to avoid unconstitutionality even at the cost of a tortured statutory construction. It is quite another to recognize the validity of a statute directed expressly to the situation in hand and so employed by the state authorities, when constitutionality of that statute is as incontestably clear as the decision of the New York Court of Appeals has demonstrated it to be in sustaining the sister statute of the Pennsylvania Act, *In the Matter of Bronx Gas & Electric Co. v. Maltbie*, 271 N. Y. 364. The Court's opinion in the present case does not avoid issues of constitutionality. It accepts the much more dubious constitutional doctrines of *Smyth v. Ames* and its successors to solve the very easy constitutional issues raised by the Pennsylvania Act.

Mr. Justice BLACK concurs in the above views.

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